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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 198.

THE GRAND RAPIDS AND INDIANA RAILROAD COMPANY, THE CONTINENTAL IMPROVEMENT COMPANY, WILLIAM H. BARNES, AND THE PHILADELPHIA TRUST, SAFE DEPOSIT AND INSURANCE COMPANY, PLAINTIFFS IN ERROR,

vs.

JOHN BUTLER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

FILED JUNE 19, 1891.

(14,693.)

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INDEX.

	Original.	Print.
Caption	1	1
Transcript from circuit court for county of Kent	1	1
Bill of complaint	1	1
Subpœna	17	11
Sheriff's return	18	11
Answer	19	12
Replication	27	18
Notice of issue	29	18
Notice as to examination of witnesses	31	19
Petition of complainant suggesting death of Geo. W. Cass, &c.	33	20
Petition of complainant suggesting death of Geo. W. Cass, &c.	37	22
Notice of motion on suggesting death of Geo. W. Cass, &c.	41	24
Order making new party	44	25
Note of issue	46	26
Note of issue	47	26
Note of issue	48	27
Note of issue	49	27

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 5, 1894.

	Original.	Print.
Note of issue	50	28
Note of issue	51	28
Note of issue	52	29
Note of issue	53	29
Stipulation making new party, &c	54	30
Complainant's bill of costs	55	30
Certificate as to transcript of stenographer's notes	59	33
Claim of appeal	60	33
Notice of appeal, &c	61	34
Bond on appeal	64	35
Notice of approval of bond	66	36
Case setting forth evidence at large	69	37
Testimony of Thomas W. Greenley	71	38
Maxim Ringuett	87	50
Thomas Berry	114	71
James Rumsey	120	75
Thomas W. Porter	137	88
Record evidence offered by complainant	166	109
Testimony of Nathaniel Rice	177	116
Testimony of John Butler	179	118
Deposition of Ebenezer W. Barns read in evidence	222	149
Record evidence offered by defendants	222	149
Testimony of Ransom C. Luce	223	149
Dorr Skeels	228	153
Zenas G. Winsor	252	171
Bilius Stocking	284	195
Selden E. Turner	309	214
Benjamin S. Hanchett	343	238
Robert M. Barr	362	252
Abram W. Pike	374	261
Bilius Stocking (recalled)	383	268
Ransom C. Luce (recalled)	384	269
Thomas Robbins	387	271
David Laraway	397	279
John McConnell	403	284
Andrew Fyfe	407	287
Wm. A. Shinkman	409	288
George C. Pierce	411	289
Wm. A. Shinkman (recalled)	414	291
John Doris	414	291
James D. Lyon	418	295
John Butler (recalled)	420	296
Patrick J. Britton	420	301
James L. Rumsey	433	305
Herman Van Alderen	440	318
Joseph Penney	452	320
John T. Holmes	453	321
Stipulation as to testimony of E. W. Barnes	460	326
Deposition of Ebenezer W. Barnes	461	327
Classification of documentary evidence	466	330
Chapter 1—Certified copy of field-notes from office of commissioner of State land office of Michigan, being Complainant's Exhibit A	468	332

	Original.	Print.
Chapter 2—Records and entries in the office of the register of deeds of the county of Kent introduced by complainant to prove his title to lands in controversy	477	338
Description of tract	477	338
Abstract book	479	339
Records of conveyances, &c.	480	340
Deed, Nelson *et ux.* to Ball, November 29, 1853.	482	341
Deed, Ball *et ux.* to B. D. Ball, Nov. 8, 1866.	484	342
Deed, Ball *et ux.* to Bryan, March 11, 1869.	486	344
Deed, Bryan *et ux.* to Butler, March 21, 1873.	488	345
Deed, Gezon *et ux.* to Butler, June 10, 1873.	490	348
Chapter 3—Record of patent from United States to Grand Rapids and Indiana R. R. Co., March 28, 1871.	492	349
Chapter 4—Entries in tract book in office of register of deeds of Kent county relating to Islands Nos. 1, 2, 3, and 4, in Grand river, and to certain parts of section 25, township 7, 12 west.	494	349
Chapter 5—Certified copy of field-notes from General Land Office, being Defendants' Exhibit A	495	350
Chapter 6—Certificate to four maps from General Land Office, being Defendants' Exhibit B	506	357
Chapter 7—Copy of map of Island No. 7, being Defendants' Exhibit C	506	358
Chapter 8—Skeel's map of banks of Grand river and Islands 3 and 5, being Defendants' Exhibit 4	506	358
Chapter 9—Skeel's map of Island No. 5, being Defendants' Exhibit 5	507	358
Chapter 10—The Hollister map, being Defendants' Exhibit —.	507	358
Chapter 11—Proceedings of common council of Grand Rapids and of superior court in relation to the opening of East Fulton street from Waterloo street east to Grand river and assessment-rolls therefor	507	358
Chapter 12—Receipts to G. R. & I. R. R. Co. for taxes and other charges against Island No. 5 from 1874 to 1889	516	364
Chapter 13—Certificate of governor of Michigan of completion of G. R. & I. R. R. from State line to Bridge street	525	371
Chapter 14—Copy of section of city map of 1884	527	372
Final decree	528	373
Statement as to appeal	531	375
Register's certificate to transcript	532	375
Affidavit of Roger W. Butterfield	533	375
Motion to require appellants to print maps, &c.	535	377
Affidavit of Willard F. Keeney	537	377
Affidavit of Roger W. Butterfield	540	379
Statement in answer to motion to require maps to be printed	541	380
Affidavit of James H. Campbell	543	380
Order requiring appellants to print maps	546	382
Order beginning hearing	547	382

	Original.	Print.
Order concluding hearing and taking cause under advisement	548	383
Opinion	549	383
Decree	562	390
Bill of costs	563	391
Petition for writ of error	566	393
Certified copy of opinion of the court attached	580	400
Certified copy of decree attached	593	408
Citation	594	409
Proof of service of citation	595	409
Bond on writ of error	596	410
Prayer for reversal	598	411
Assignment of errors	600	412
Notice to solicitors for defendant in error	606	415
Calendar entries	610	416
Writ of error	611	417
Return on writ of error	613	418
Clerk's certificate	614	419
Map which appeared on the back of commissioner's certificate to Complainant's Exhibit A	616	419
Plat of Bryan & Ball's subdivision	617	419
Map of the N. W. fraction of township No. 7 N., range No. 12 W.	618	419
Map of the S. E. fraction of township No. 7 N., range 12 W.	619	419
Map of township No. VII N., range XII W	620	419
Map of township No. 7 N., range 12 W., showing island in Grand river	621	419
Map of Island No. 5, in Grand river, township No. 7 N., range No. 12 W	622	419
Map of Island No. 5, &c	623	419
Map of Island No. 5, &c	624	419
Map annexed to assessment-roll	625	419
Map showing section of city	626	419

1 STATE OF MICHIGAN:

In the Supreme Court.

Appeal from final decree of the circuit court for the county of Kent, in chancery, made May 14, 1890, in the case of—

JOHN BUTLER, Complainant, Appellee,
vs.
THE GRAND RAPIDS AND INDIANA RAILROAD COMPANY *et al.*, Defendants, Appellants.

Record.

Contents of this printed record are:
1. Bill of complainant.
2. Answer of all defendants.
3. General replication.
4. "Case" containing all proof adduced.
5. Final decree.
6. Appeal.

I.—*Bill of Complaint.*

STATE OF MICHIGAN:

The Circuit Court for the County of Kent. In Chancery.

To the circuit court for the county of Kent, in chancery:

Your orator, John Butler, of the city of Grand Rapids, county of Kent, and State of Michigan, brings this, his bill of com-
2 plaint against The Grand Rapids and Indiana Railroad Company, The Continental Improvement Company, George W. Cass, and The Philadelphia Trust, Safe Deposit and Insurance Company, and humbly complaining respectfully shows unto this honorable court:

1. That your orator now is and for some years last past has been the owner in fee-simple of certain premises situate and being in the city of Grand Rapids, county of Kent and State of Michigan, and particularly described as follows, to wit: Lots numbered five, six, seven, eight, nine and the north half of lot thirteen; all of Bryan and Ball's subdivision plat of the village of Kent (now part of the city of Grand Rapids aforesaid); and that your orator is now in the actual and peaceful possession and occupation of said premises.

2. That said lot was deeded to your orator on the 25th day of March, 1870, by Dennis W. Bryan and wife, by deed which was afterwards and on the said 25th day of March, 1870, recorded in the office of the register of deeds of said county of Kent, in Liber 64 of Deeds, on page 171; that said lots six, seven and nine were deeded to your orator on the 21st day of March, 1873, by said Dennis W. Bryan and wife, by deed which was afterward and on the

same day recorded in the office of said register of deeds, in Liber 85 of Deeds, on page 362; that said lot eight was deeded to your orator on the 10th day of June, 1873, by John Gezon, Jr., and wife, by deed which was afterward and on the 17th day of June, 1873, recorded in the office of said register of deeds, in Liber 86 of Deeds, on page 264; that the north half of said lot thirteen was deeded to your orator on the 21st day of September, 1874, by a circuit court commissioner of said county of Kent, on foreclosure duly had against James McHugh, Jane A. McHugh and James Ellett, by deed which was afterward and on the 6th day of November, 1876,
3 recorded in the office of said register of deeds, in Liber 103 of Deeds, on page 357; as in and by said deeds or the records thereof, when produced and proved, as this court may direct, and to which when produced and proved your orator for greater certainty, craves leave to refer, will more fully and at large appear; that said deeds and each of them were in the direct chain of title from the United States Government, and in and by said deeds your orator acquired a good and true title to the premises therein described, which title your orator has retained down to the time of the filing of this bill of complaint.

3. That the said premises so owned by your orator are situate on, and were originally known as a portion of the north fractional half of the southeast quarter of section twenty-five, in township number seven north, of range number twelve west, in said county of Kent and State of Michigan; that said north fractional half of said southeast quarter of said section twenty-five was originally and duly entered from the Government of the United States by Lucius Lyon and Erotus P. Hastings in or about the year 1832; that the said description so entered was bounded on the westerly side by the middle or thread of Grand river, a stream flowing through what is now said city of Grand Rapids, and which at this point runs in a southerly or southwesterly direction; and that afterwards and on the 5th day of November, 1833, a patent was duly issued by the United States Government to said Lyon and Hastings for the land so entered, which patent was afterward and on the 26th day of September, 1849, recorded in the office of the register of deeds of said county of Kent, in Liber M of Deeds, on page 450; to the record or evidence of which your orator for greater certainty craves leave to refer; and that the persons so entering said description of land and to whom patent was issued as aforesaid, took the usual rights of riparian proprietors, including the title to the soil to the middle
4 or thread of said named stream; that the easterly bank of said river was duly meandered and surveyed by the United States surveyor, acting under the authority of the United States Government, during the year 1831; that at the time of such survey and at the time said lands were entered from the Government by said Lyon and Hastings in the year 1832, and at the time patent was issued therefor as aforesaid, there lay, opposite a portion of said lands so entered and between the middle or thread of said stream and the easterly bank thereof, a low sand bar or piece of ground, which constituted a portion of the bed of said stream;

which sand bar or piece of ground at that time, as your orator is informed and believes, and for some years after, was covered with water, even at low water, and was never uncovered unless, perhaps, at a very low stage of the waters of said stream; that, as your orator is also informed and verily believes, no survey of said sand bar or piece of ground was made nor was the same meandered by said United States surveyor at the time of said survey in the year 1831, nor up to the time said lands were entered from the Government in 1832, nor up to the time patent was issued therefor as aforesaid, nor for many years thereafter; but that the said sand bar or piece of ground was sold by the United States to said Lyon and Hastings as appurtenant to the lands lying along the easterly bank of said stream and passed out of their hands into the hands of purchasers in good faith and for a valuable consideration long before the said sand bar or piece of ground was ever surveyed or meandered at all, and without any setting apart or designation of the same as a separate piece of land, in any manner whatsoever, by the United States Government; and your orator expressly charges that by such sale said Lyon and Hastings acquired all and every the usual and customary rights of riparian proprietors in the State of Michigan and took the title of the soil to the middle or thread of said stream, including the title to said sand bar or piece of ground above referred to.

4. That afterwards, as your orator is informed and believes, the waters of said stream, from natural causes, decreased in volume, and accretions were made to said piece of ground lying between the easterly bank and middle of said stream, so that said piece of ground in low water would at times be left bare, the main channel and the thread of said stream being on the westerly side thereof and a narrow channel of water on the easterly side thereof between said piece of ground and the main land; but that said piece of ground continued for many years and long after the meandering thereof hereinafter mentioned, to be covered by water and submerged during the greater part of the year.

5. That on or about the 28th day of September, 1869, said Dennis W. Bryan, who was then the owner of a portion of the land originally known as said north fractional half of said southeast quarter of said section twenty-five, which portion bordered and was bounded on the westerly side by said river, joined with his wife and others in the dedication of a plat known as Bryan and Ball's subdivision plat of the village of Kent, now part of the city of Grand Rapids, on which said plat were marked the lots afterward purchased by your orator, which were thereon designated as lots five, six, seven, eight, nine, and the north half of lot thirteen, on which plat lots numbered from one to seventeen, both inclusive, were owned by said Bryan, said lots being all fifty feet in width, so that said Bryan was then the owner of four lots on the north side and four and one-half lots on the south side of the several lots of your orator hereinbefore described; and in said plat it was mentioned and provided that the several lots therein mentioned were bounded on the east

by the west line of Water street, and on the west by the mid-
6 dle channel of Grand river, and that the lines of said lots
now owned by your orator, running easterly and westerly, make right angles with the west line of Water street, now Waterloo street, and extend westwardly to the middle channel of Grand river; as in and by said plat or the record thereof, when produced and proved as this honorable court may direct, and to which, when produced and proved, your orator for greater certainty craves leave to refer, will more fully and at large appear. And your orator says that portions of said piece of middle ground and of the channel between the same and the easterly bank, were included within the boundaries of said lots afterwards purchased by your orator as the same were laid out on said plat, and that at the time of such platting said Bryan owned and claimed to own that portion of said piece of middle ground between his land on the easterly bank and the middle of said stream; that, as your orator is informed and believes, said Lyon and Hastings, and all the persons claiming under them as owners of the land lying along said river opposite said piece of middle ground, have always, continuously from the entry of said lands down to the present time, claimed by virtue thereof to be the owners of said piece of middle ground or sand bar, and that they have not nor have any of them parted with their or any of their rights therein or thereto. And your orator expressly charges the fact to be that by such deeds of said several lots so made to him as aforesaid, he acquired all and every the usual and customary rights of riparian proprietors in the State of Michigan and took the title of the bed of the stream to the center or thread thereof, including the title to that portion of sand bar or piece of middle ground and of said channel hereinbefore mentioned lying between the lines of said several lots as extended to the middle channel or thread of said stream; and by virtue of such deeds he has ever since claimed and now claims such title as aforesaid. That im-
7 mediately upon the giving of such deeds to your orator as hereinbefore set forth, he entered into the actual possession and occupation of all and singular the lots therein described respectively, according to the plat thereof as recorded, the same being bounded and described as follows: Commencing at the point of intersection of the northerly line of said lot five with the westerly line of Waterloo street in said city; thence in a westerly direction, on a line drawn at right angles with said Waterloo street, to the center of Grand river; thence in a southerly direction along the center line of said river to the point of intersection of said center line of Grand river with a line drawn from the southeasterly corner of said lot nine, at right angles with said westerly line of Waterloo street to the center line of said river; thence in an easterly direction on said line drawn at right angles with Waterloo street, to the westerly line of Waterloo street, at the southeasterly corner of said lot nine; thence in a northerly direction, along said westerly line of Waterloo street, to the place of beginning; also, commencing at the point of intersection of the northerly line of said lot thirteen of Bryan and Ball's subdivision plat with the westerly line of said

Waterloo street; thence in a westerly direction, on a line drawn at right angles with said westerly line of Waterloo street, to the center of Grand river; thence in a southerly direction along the center of said river to the point of the intersection of the center line of said stream with a line commencing on the westerly line of Waterloo street at the center of the front line of said lot, the same being a point twenty-five feet south of the place of beginning and drawn at right angles with said westerly line of Waterloo street, and extending in a westerly direction to the center of said stream; thence in an easterly direction, along the line so drawn at right angles with Waterloo street, to the westerly line of said street; thence in
8 a northerly direction along the westerly line of Waterloo street twenty-five feet to the place of beginning; and that your orator has ever since the making of the deeds to him, as aforesaid, remained and been in the actual and peaceable possession of the said premises in this paragraph described, and that he has made many improvements thereon of the value of several thousands of dollars.

6. That in or about the year 1856, as your orator is informed and believes, one T. Whelpley, a surveyor, claiming to act under the authority of the Interior Department of the United States Government, surveyed and meandered the said mentioned piece of ground, and the same was marked and designated by him as island No. 5.

7. That, as your orator is informed and believes, on or about the 28th day of March, 1871, a certain indenture, in writing, purporting to be a United States patent, was made and executed by the commissioner of the United States land office to the State of Michigan for the use of the said defendant Grand Rapids and Indiana Railroad Company, which conveyance covered many thousands of acres of lands, and among others attempted to cover and convey island No. 5, in Grand river, containing, as mentioned in said patent 2 and $\frac{5}{100}$ acres of land; but that said patent was kept from record, and was not recorded in the office of the register of deeds of said county of Kent, until the ninth day of August, 1887, and that the same is to be found in said register's office, in Liber 183 of Deeds, on page 1.

8. That said defendant Grand Rapids and Indiana Railroad Company is and at the time of the issuing of the patent aforesaid was a railroad corporation organized and existing under and by virtue of the laws of the States of Michigan and Indiana, and doing business in said State of Michigan; that said patent was issued in pursuance of an act of the Congress of the United States, approved June 3rd, 1856, entitled: "An act making a grant of alternate
9 sections of the public lands to the State of Michigan, to aid in the construction of certain railroads in said State, and for other purposes;" as amended by an act of Congress, approved June 7, 1864, entitled: "An act to amend an act entitled 'An act making a grant of alternate sections of public lands to the State — Michigan to aid in the construction of certain railroads in said State, and for other purposes;" ' that thereby it was provided that the lands granted by said act, and by the provisions of said act as amended, should be disposed of only in manner as herein provided, and that

when the governor of the State of Michigan should certify to the Secretary of the Interior that ten consecutive miles of said road had been completed in a good and substantial manner as a first-class railroad, indicating definitely where said completed section commenced and where the same terminated, the said Secretary should cause patents to issue to said State for so much of said lands as were located opposite to and coterminous with said completed section of said road.

9. That afterward by an act of the legislature of the State of Michigan, approved March 17, 1869, entitled: "An act to provide for the transfer of the right, title, and interest of the State in and to certain lands granted by Congress to aid in the construction of a railroad from Grand Rapids to Traverse bay," it was provided that the right, title, and interest of the State of Michigan in and to so much of the lands granted by the United States to aid in the construction of a railroad from Grand Rapids to Traverse bay, under the acts of Congress hereinbefore referred to, as were situate opposite to and coterminous with that portion of the Grand Rapids and Indiana railroad then already completed, which commenced at a point thirteen hundred feet south of Bridge street, in the city of Grand Rapids, Kent county, Michigan, and terminated in the village of Cedar Springs, in said county of Kent, and for which a certificate had been issued by the governor of the State to the Secretary of the Interior, be and thereby was fully vested and confirmed in the said Grand Rapids and Indiana Railroad Company. That it is under this provision of the act aforesaid that the claim of said railroad company and the other defendants hereinafter set forth is made, and that no grant of said lands to said railroad company was ever attempted to be made, other than as by the acts aforesaid; that the said sand bar or piece of ground, and the entire thereof being the same piece marked in the survey of 1856 as Island No. 5, as aforesaid, is and at the time of the passing of said acts and the issuing of said patents was much more than thirteen hundred feet south of said Bridge street in the city of Grand Rapids aforesaid, and was not opposite to and coterminous with that portion of said Grand Rapids and Indiana railroad then completed at the time of the passing of said act of the legislature of the State of Michigan, approved March 17, 1869, but was some distance south thereof; and that the said piece of land was not within the limits of the land grant of said road.

10. That, in said stream, above said piece of ground, were two small islands, called Islands Nos. 1 and 2; the main channel of said river being on the westerly side thereof, and only a narrow channel on the easterly side between said islands and the mainland; that in or about the years 1868, 1869 and 1870 said narrow channel, or the easterly side of said islands, became filled and the waters of said river ceased entirely to flow through the same, but flowed entirely through the main channel on the westerly side thereof; that the piece of ground or sand bar hereinbefore mentioned was left bare the greater part of the year, and the waters of said river ceased to flow between the same and the mainland. That at the present time said

piece of land is dry ground and is of great value. That your orator resides on a portion of the premises owned by him,
11 and has resided thereon ever since the giving to him of said deed of date March 25, 1870; that he has three other houses on said premises; that the dry land now actually occupied and possessed by your orator extends back from Waterloo street to the channel of said river, a distance of about five hundred feet, and includes all that portion of said former sand bar or piece of ground hereinbefore referred to, being the same piece marked as Island No. 5 on said survey of 1856, and of the former channel on the easterly side thereof lying between the front lines of your orator's lots on Waterloo street and the channel of said stream, the same being all the land included within the boundaries of said stream, the same being all the lands included within the boundaries of said lots five, six, seven, eight, nine, and the north half of lot thirteen of Bryan and Ball's subdivision plat, extended to the middle of Grand river as laid out on said plat, up to and as far as the channel of said stream; that a considerable portion thereof, including, a part of what was formerly said sand bar or piece of middle ground, is and for some years has been under cultivation by your orator, and your orator has raised crops thereon.

11. That, as your orator is informed and believes, said Grand Rapids and Indiana Railroad Company has executed no deeds of conveyance of said premises or any portion thereof, but has claimed and does now claim, give out and pretend that by reason of said patent and act of the legislature of this State, it has a valid and subsisting title in fee-simple to and is the owner of that portion of the said premises included within the boundaries of your orator's lots extended to the middle of Grand river as laid out on the plat aforesaid, which was formerly a part of said sand bar or middle ground, and of the land on the westerly side of the middle line of the narrow channel formerly running between said middle ground and
12 the main land; including all that portion of Island No. 5, so called, in Grand river, lying within the boundaries of said lots five, six, seven, eight, nine, and the north one-half of lot thirteen as extended to the middle of Grand river, all in Bryan and Ball's subdivision plat recorded as aforesaid; that said defendant, Continental Improvement Company is a corporation organized and existing under the laws of the State of Pennsylvania, and, as your orator is informed and believes, claims rights and interests in that portion of said premises which is claimed by said railroad company, by virtue of an alleged contract between it and said railroad company for the conveyance to it by said railroad company of the land-grant lands of said road; that said Philadelphia Trust, Safe Deposit, and Insurance Company, which is a corporation organized and existing under the laws of the State of Pennsylvania, and said George W. Cass, claim rights and interests in that portion of said premises which is claimed by said Grand Rapids and Indiana Railroad Company, as trustees under a certain mortgage executed by said Grand Rapids and Indiana Railroad Company and said Continental Improvement Company, to secure the payment of certain bonds therein

mentioned, which mortgage bears date the first day of October, 1869, and was recorded on the fourth day of February, 1870, in the office of the register of deeds of said county of Kent, in Liber 29 of Mortgages, on page 390.

12. That your orator has in a friendly manner applied to said defendants, Grand Rapids and Indiana Railroad Company, Continental Improvement Company, Geo. W. Cass and Philadelphia Trust, Safe Deposit, and Insurance Company, and has requested them and each of them to release to your orator their pretended title and interest in and to that portion of the premises aforesaid, to which they make claim respectively as hereinbefore set forth, and has offered to pay the expense of conveyance, but that
13 they, the said named defendants, and each of them, have refused to convey or release their said alleged title therein.

13. And your orator further shows unto the court that the said patent issued to said State of Michigan for the use of said defendant railroad company, and the said act of the legislature of the State of Michigan, give to said railroad company no title to said premises now claimed by it; and that said patent is utterly and entirely null, void and of no effect in so far as the same attempts to convey any title to an Island No. 5 in Grand river or to any portion of the premises now claimed by your orator; that at the time of said survey in 1856, and at the time of the issuing of said patent there was no island in fact, but a sand bar merely, and said land surveyed had previously been sold by the United States Government and had passed as appurtenant to the lands on the easterly side of said stream; that the United States Land Office acted entirely without jurisdiction in causing such survey to be made in the year 1856, and the Commissioner of said Land Office acted entirely without jurisdiction in issuing said patent in the year 1871; that their actings and doings in the premises, being entirely without authority, could give no title to said railroad company or any party claiming under it; that said premises are not included within the limits of the land grant of said road, and any pretended patent issued by the said Commissioner of the Land Office therefor, is, on that account, issued without jurisdiction, and is, so far as said premises are concerned, wholly and entirely void and of no effect; that said lands are not included within the limits of the grant made by the State of Michigan by said act of the legislature of said State, approved March 17, 1869, and on that account said railroad company or any party claiming thereunder never obtained or could obtain any valid title thereto.

14 14. That said defendants, Grand Rapids and Indiana Railroad Company and Continental Improvement Company, are now offering for sale the said premises to which they claim title as aforesaid, and have caused said lands to be advertised as for sale by them in one or more of the daily newspapers in the city of Grand Rapids, in said county, and are endeavoring to find a purchaser therefor; and your orator shows that, unless they are restrained by injunction issued out of this honorable court, they will sell or contract to sell said premises to a purchaser in good faith relying upon their

record title and upon the said patent so issued by the Commissioner of said Land Office, covering Island No. 5 in Grand river aforesaid to the irreparable injury of your orator.

15. And your orator further shows unto the court that the said premises owned by your orator, and in or to which said defendants claim title as aforesaid are worth at least the sum of two thousand dollars, and that the said patent so issued by the Commissioner of the United States Land Office, and the claims of said railroad company, improvement company, and of the trustees under said mortgage constitute a cloud upon the title of your orator and that by reason thereof, the market value of said lands is diminished, and your orator is prevented from disposing of the same at a fair price.

To the end, therefore, that the said Grand Rapids and Indiana Railroad Company, Continental Improvement Company, George W. Cass and Philadelphia Trust, Safe Deposit and Insurance Company, the defendants herein, may without oath (answer on oath of said defendants or any of them being hereby expressly waived) full, true, direct and perfect answer make to all and singular the matters herein set forth, and that as fully and particularly as if the same were here again repeated, and they and each of them thereunto particularly interrogated, and that the said patent may be declared void and of no force or effect in so far as it attempts to convey any title to said so-called island No. 5, or in or to any portion of said premises claimed by your orator, as hereinbefore set forth, and that the said named defendants and each of them be decreed to release of record by conveyance in proper form, all claim against said described premises in which they now claim title as aforesaid, and in default of such conveyance that your orator have leave to record the decree of this court in this proceeding, and that, when so recorded, it may have the same force and effect, as though such deed of conveyance or release had been so executed, acknowledged, delivered and recorded; and that the said defendants Grand Rapids and Indiana Railroad Company and Continental Improvement Company, their and each of ther officers, agents, servants, attorneys and employés be permanently restrained by injunction issuing out of this court directed to them, from selling, conveying or contracting to sell or convey, that portion of said premises included within the boundaries of said lots five, six, seven, eight, nine and the north half of lot thirteen extended to the middle of said river, in Bryan and Ball's subdivision aforesaid, according to the plat thereof recorded as aforesaid lying west of the middle of the channel formerly lying between said piece of middle ground mentioned in said patent as Island No. 5 in Grand river, and the easterly bank of said stream, or any part thereof, including all that portion of Island No. 5 so called, in Grand river, lying within the boundaries of said lots five, six, seven, eight, nine and north one-half of lot thirteen as extended to the middle of Grand river, all in Bryan and Ball's subdivision plat recorded as aforesaid; and that they be in like manner enjoined until the further order of this court; and that your orator may have such

other relief in the premises as the nature of the case may require, and as shall be agreeable to equity and good conscience.

May it please the court to grant to your orator the writ of injunction to be issued out of and under the seal of this honorable court, to be directed to the said Grand Rapids and Indiana Railroad Company and Continental Improvement Company, their and each of their officers, agents, servants, attorneys and employés strictly commanding and enjoining them and each of them that they do absolutely and entirely desist and refrain from selling, conveying, or contracting to sell or convey that portion of the said premises included within the boundaries of said lots five, six, seven, eight, nine and the north half of lot thirteen extended to the middle of said river, in Bryan and Ball's subdivision, aforesaid, according to the plat thereof recorded, as aforesaid, lying west of the middle of the channel formerly lying between said piece of middle ground mentioned in said patent as Island No. 5, in Grand river, and the easterly bank of said stream, including all that portion of Island No. 5, so called, in Grand river, lying within the boundaries of said lots five, six, seven, eight, nine, and the north one-half of lot thirteen as extended to the middle of Grand river, all in Bryan and Ball's subdivision plat recorded as aforesaid, until the further order of this court.

May it please the court, the premises being considered, to grant to your orator the gracious writ of subpœna, to be issued out of and under the seal of this honorable court, to be directed to the said Grand Rapids and Indiana Railroad Company, Continental Improvement Company, George W. Cass and Philadelphia Trust, Safe Deposit, and Insurance Company, defendants herein, thereby commanding them and each of them, on a certain day and under a certain penalty to be therein inserted, personally to be and
19 appear before this court, then and there to answer all and singular the said premises, and to stand to, abide, and perform such order and decree therein as this court shall make therein, and as shall be agreeable to equity and good conscience.

And your orator will ever pray, etc.

JOHN BUTLER.

BUTTERFIELD & KEENEY,
Solicitors and of Counsel for Complainant.

STATE OF MICHIGAN, } ss:
County of Kent, }

On this 8th day of September, in the year 1887, before me, a notary public in and for said county, personally appeared John Butler, to me personally known to be the same person named in and who subscribed as complainant the foregoing bill of complaint, who, being by me duly sworn, doth depose and say that he has heard read the said bill of complaint by him subscribed and knows the content thereof, and that the same is true of his own knowledge

except as to matters therein stated on information and belief, and as to those matters he believes it to be true.

MARY B. CAMPBELL,
Notary Public in and for Kent County, Mich.

Endorsed: "Filed Sep. 9, 1887. C. L. Harvey, register."

17 *Chancery Subpœna.*

STATE OF MICHIGAN, *ss:*

The Circuit Court for the County of Kent. In Chancery.

In the name of the People of the State of Michigan, to the Grand Rapids and Indiana Railroad Company, Continental Improvement Company, George W. Cass, and Philadelphia Trust, Safe Deposit, and Insurance Company, Greeting:

[SEAL.]

You are hereby notified that a bill of complaint has been filed against you in the circuit court for the county of Kent, in chancery, by John Butler as complainant, and that if you desire to defend the same you are required to have your appearance entered with the register of said court at his office, in the city of Grand Rapids, in person or by solicitor, within twenty days after the 21st day of September, in the year 1887, which is the return day of this writ. Hereof fail not under the penalty of having said bill taken as confessed against you.

Witness the Hon. Robert M. Montgomery, circuit judge of Grand Rapids, this 9th day of September, in the year of our Lord one thousand eight hundred and eighty-seven.

CORNELIUS L. HARVEY, *Register.*

BUTTERFIELD & KEENEY,
Sol'rs for Compl't.

Underwriting.—A personal decree is sought against the defendants for costs and the bill is filed to reach interests in property.

BUTTERFIELD & KEENEY,
Solicitors for Compl'nt.

18 STATE OF MICHIGAN, *County of Kent,* } *ss:*

In the Circuit Court for the County of Kent. In Chancery.

I do hereby certify and return that on the 9th day of September, A. D. 1887, I personally served the within subpœna on the within-named Grand Rapids and Indiana Railroad Company, a corporation, by delivering to William O. Hughart, who is and then was the president of said named corporation defendant, at the city of Grand Rapids, county of Kent, and State of Michigan, a true and compared copy thereof, subscribed by the complainant's solicitors and inscribed "copy," at the same time showing to him this original

with the seal of the court impressed t-ereon; and I do further certify and return that I made diligent search and inquiry as to the whereabouts of the within-named defendant-, Continental Improvement Company, George W. Cass, and Philadelphia Trust, Safe Deposit, and Insurance Company, and that I am unable to find the said last-named defendants within my bailiwick. Dated September 23, A. D. 1887.

LOOMIS K. BISHOP, *Sheriff*,
By HARMON COWENS, *Dep. Sheriff*.

Amount, $1.10.

At a session of the supreme court, held April 22, 1879, the following rule was adopted, to stand as chancery rule 122:

Rule 122. To remove the danger of mistake among defendants ignorant of the meaning of the command of a subpœna, it shall be necessary after January 1, 1880, and be permitted and recommended until then, that the body of the subpœna, instead of requiring personal appearance under a pecuniary penalty, shall contain a notice of the filing of the bill, and of the time when appearance may be entered on penalty of default, and there shall be underwritten a notice designating against what defendants a personal decree is asked.

Such subpœna shall be substantial compliance with the form hereto appended.

Printed forms must be clearly and legibly printed on durable paper, and such subpœna and underwriting must be on a page of full-letter size and the heading and place of endorsement deep enough not to be obscured by enrollment.

19 II.—*Answer.*

STATE OF MICHIGAN:

The Circuit Court for the County of Kent. In Chancery.

The joint and several answer of the Grand Rapids and Indiana Railroad Company, the Continental Improvement Company, George W. Cass, and the Philadelphia Trust, Safe Deposit, and Insurance Company, to the bill of complaint of John Butler, complainant.

These defendants, saving and reserving to themselves, and each of them, all benefit of exception to the said bill of complaint, and every part thereof, severally answering, say:

First. They are not advised, save by said bill, as to the ownership of lots number five, six, seven, eight, nine, and the north half of number 13, of Bryan and Ball's subdivision plat of the village of Kent.

Second. They are not informed, save by said bill, as to the deeds and conveyances set up in the said bill in the second clause thereof, through and by which the said complainant claims to have acquired title to said lots.

Third. They admit that the said premises were originally a part of the north fractional half of the southeast quarter of section twenty-five (25) in township number seven (7) north, of range number twelve (12) west, in said county; but they are not informed, save by said bill, as to when the said subdivision was entered from Government.

They admit, however, that the said parcel was bounded on the west by Grand river, and that the said river runs as alleged in the bill. They are not informed, save by said bill, as to when, if ever, a patent issued of said parcel of land to Lyon and Hastings, nor as to when or where the same was recorded, if issued.

They severally deny that the persons receiving said patent take, as riparian proprietors, to the middle of Grand river, if by the allegation in said bill is meant the middle of the westerly channel of said river.

They severally admit that the easterly bank of said river was duly meandered and surveyed by the United States, at or about the time alleged in the bill.

They admit that there lay opposite a portion of said lands, a piece of ground, but they deny that the same was a low sand bar, but instead they allege that it was an island; that it did not constitute a portion of the bed of the stream, but that it was in midstream, a portion of the river running to the west of it, and a portion to the east of it, and between it and the eastern bank of Grand river.

They severally deny that the same was covered by water, although at certain periods of the year—notably in the early spring, during a period when the water in said river was unnaturally high—a portion, and sometimes possibly the whole of said island, was overflowed. But this did not happen in all years and rarely ever submerged the island. The time of high water in said stream is limited to a few days or weeks, at the outside, in any year. They admit that said island was not surveyed in the year 1831,
21 when the east bank was meandered and surveyed. That there were other islands in Grand river, at least three in number, two above and one below the island in question, which were not surveyed at the same time, nor for a considerable number of years thereafter.

They deny that the island in question was sold by the United States as appurtenant to the lands lying on the easterly bank; that there was nothing in the survey, or in the patent, indicating that there was included in the land on the east bank of the river, any of the islands opposite thereto, nor any land whatever except the main land itself. And they submit, that if it was not surveyed and set apart by the United States Government at the time the main land was surveyed and meandered, that it would not follow that the Government intended to abandon it to the complainant's grantors, or to any other person.

They severally deny that the said Lyon and Hastings obtained any title to the said island by virtue of the patent of the main land opposite thereto.

Fourth. They are not informed, save by said bill, as to whether the said island was added to by accretion, subsequent to the date of the patent referred to, but they deny that very much was added. They deny that there was any doubt or uncertainty in 1831, or at any time since, as to the existence of the island in question, because there was a distinct, prominent, and well-defined channel in Grand river, extending between the island in question and the main land, and this natural channel formed the means of navigating Grand river from below up past the premises in question, to a point considerably above and near the foot of the rapids in said stream.

Fifth. They leave complainant to his proof as to the platting of said main land by Dennis W. Bryan, as they have no information on the subject. They neither admit nor deny the allegations
22 in respect thereto. But in so far as it is intended to be charged or insinuated that the plat of the said Bryan extended beyond the westerly bank of the main land, as originally surveyed, these defendants severally deny the same.

They expressly deny that the island in question, or any part of it, was included within the boundaries of said lots, or of said plat, or that the said Bryan owned the same or any part of it. As to whether he claimed to own it or not, these defendants are not advised.

They deny, upon information and belief, that the original owners, or any owner of said main land, unless it may have been the said Bryan—as to which they neither admit nor deny—claimed or pretended that they were the owners of the island in question. They are not informed, save by said bill, as to whether the complainant has pretended to own the island in question. They have been informed that he sometimes did set up a claim, but they never believed that such pretense was made in good faith.

They deny that complainant has ever taken possession of said island in question. They admit that from time to time he has pretended to take possession of a portion, but always against the protest of these defendants, and that on one or more occasions, when these defendants caused the lands to be enclosed by a fence, the said complainant has destroyed the same.

And they severally deny that the said complainant has made any improvements upon the premises known as the island in question.

Sixth. They severally admit that at or about the time alleged in the bill, the island in question was meandered and surveyed by one Whelpley, who was then and there a deputy surveyor general of the United States, and acting under the authority and order of the Government. The island when measured and surveyed by him was designated as Island Number Five.

23 These defendants further severally answering say, that between the foot of the rapids in Grand river a point a few miles below, there were four islands, when the original survey of the main land opposite thereto was made. These islands were not included, but the bank was meandered and surveyed, and the num-

ber of acres found therein placed upon the field-notes of the surveyor; there was no pretense or intention of including these islands in the land so surveyed. And afterwards, in 1837, or thereabouts, the United States Government caused some of these islands to be surveyed, two of those so surveyed and measured were just above the one in question in this suit, and the third was just below. Upon this survey being made, the upper islands were designated as Numbers One and Two, and the one below as Number Three. An island still further down the stream a short distance was designated as Island Number Four. The island in question was not surveyed until 1856, at the time and by the person alleged in the sixth clause of the bill; but when surveyed, and the amount of land therein ascertained, it was designated as Island Number Five. All these islands were distinct from the main land, and separated therefrom by a considerable body of water, probably more than half of the water passing through Grand river, at its ordinary stage.

And as the west branch of the stream of this point was wide and rocky, the water which ran therein was necessarily shallow, and such navigation as there was of the river was confined necessarily to the east channel, extending between the islands above referred to and the main land on the east.

Seventh. The defendants severally admit, that at or about the date alleged in the bill, the United States Government issued
24 a patent to this defendant, The Grand Rapids and Indiana Railroad Company, for the island in question numbered five.

They also admit that the patent covered many descriptions of land other than the island in question, and they admit that the same was not recorded in the register's office in Kent county, until August, 1887.

Eighth. They admit that the defendant, The Grand Rapids and Indiana Railroad Company, is a corporation organized as alleged in the bill, and with the purpose therein stated. And also that the said patent was issued in pursuance of the acts of Congress referred to in the bill.

Ninth. They admit the passage of the acts by the legislature of the State of Michigan, approved March 17th, 1869, and that the provisions of the law *was* substantially as stated in the bill of complaint herein.

The defendants severally deny that they relied for their right and title to the island in question upon the act of the legislature of the State of Michigan above set forth, but they aver that in the absence of any such act they would have been entitled to the island in question.

They are not advised, save by said bill, as to the distance between Bridge street and Island No. 5, and leave said complainant to his proof.

They deny, however, that the said Island No. 5 was not within the limits of the grant of land to the said road, but on the contrary thereof, they say that it was expressly included therein

Tenth. They severally admit the existence of the islands num-

bered one and two above number five, as alleged in the bill, and they admit that some time prior to 1871, by an agreement between the parties in interest, the easterly channel of Grand river was substantially filled up, saving only a large trunk sewer, which took the place of the bed and banks of the said stream, as it formerly
25 was. By means of filling up the channel in question connection was made between Islands No. 1 and 2, and the main land, and as the territory in question was in the most valuable part of the city of Grand Rapids, the lands so filled, together with the islands, were worth a large sum of money and are now almost wholly covered by buildings and other improvements.

By consent of these defendants the sewer in question was extended southerly between Island No. 5 and the main land, so as to complete the improvement and give value to the island so belonging to these defendants.

They severally admit, that if the complainant is the owner of the lots referred to in his bill, that they extend back to the center of what was the original eastern channel of Grand river, but no further. And they deny that the distance is as stated in said bill; and they also deny that they include Island No. 5 or any part thereof.

They severally deny that Island No. 5, or any portion of it, has been under cultivation by the complainant, in any proper sense of the term. They aver that after the channel was closed there was nothing to prevent the complainant from going from his own lands onto the lands comprising said islands; and that he has probably made free to come and go, as he chose, but he never did so with the consent of these defendants, or any of them, but has known that they protested against any pretense or claim upon his part that he owned the said island; and this protest was perfectly well known to him.

Eleventh. They severally admit that no deeds or conveyances of said island have been made, and they also admit that the island is for sale. They severally admit that this defendant, The Continental Improvement Company, is a corporation organized and existing under the laws of the State of Pennsylvania, and that it has rights and interests in the island in question.

26 They also admit that these defendants, George W. Cass and The Philadelphia Trust, Safe Deposit and Insurance Company, by virtue of certain mortgages and other instruments, are interested as trustees in the premises in question.

Twelfth. They admit that counsel for complainant called upon the president of this defendant, The Grand Rapids and Indiana Railroad Company, and requested that deeds be executed by that company to the complainant, and that he refused to comply with the request.

Thirteenth. They severally deny that the patent issued to this defendant, The Grand Rapids and Indiana Railroad Company, is void. And they severally submit that whether good or bad, is wholly immaterial to the complainant, inasmuch as if the title thereto is not in these defendants, or either of them, it is still in the United States Government.

Fourteenth. They have already admitted that the island in question is for sale.

Fifteenth. They admit that the island in question is worth at least two thousand dollars; but they deny that the complainant has any right or title thereto, to be clouded by the patent issued to this defendant The Grand Rapids and Indiana Railroad Company.

And they further submit that by virtue of the several acts of Congress and of the executive officers of the Government, and by virtue of the several acts of the legislature and officers of the State of Michigan, the title to said Island No. 5, vested completely and wholly in the said Grand Rapids and Indiana Railroad Company as a part of its land grant, and that the said complainant has no legal or equitable title thereto. That the same was never included in any survey of lands owned by him, nor intended by the United States Government to pass with the lands purchased by his grantors from the Government. That his grantors received from the
68 Government every acre and part of an acre which was paid for by them or which they had any right to expect.

That the island in question, referred to in said bill of complaint, as a mere bar, is not such in fact and never was. That it is necessarily of sandy soil, like all the islands in the stream in the vicinity of Grand Rapids, and that it has always been considered and treated as separate and independent from the main land and forming no part of it.

And these defendants severally deny all and all manner of unlawful combination and confederacy with which they are charged in said bill, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

THE GRAND RAPIDS & INDIANA RAILROAD COMPANY,
THE CONTINENTAL IMPROVEMENT COMPANY,
GEO. W. CASS,
THE PHILADELPHIA TRUST, SAFE DEPOSIT AND INSURANCE COMPANY,
By T. J. O'BRIEN, *Their Solicitor.*

T. J. O'BRIEN,
Solicitor for Defendants.

27 *Replication.*

The Circuit Court for the County of Kent. In Chancery.

JOHN BUTLER, Complainant,
vs.
GRAND RAPIDS AND INDIANA RAILROAD COMPANY, CONTINENTAL Improvement Company, George W. Cass, and Philadelphia Trust, Safe Deposit & Insurance Company, Defendants.

The replication of John Butler, the above-named complainant, to the joint and several answer of The Grand Rapids & Indiana Railroad Company, Continental Improvement Company, George W. Cass, and Philadelphia Trust, Safe Deposit and Insurance Company, the above-named defendants.

This repliant, saving and reserving to himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be taken to the manifold insufficiencies of the said answer, for replication thereunto say- that he will aver, maintain, and prove his bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said named defendants is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatever in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant — and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by his said bill he has already prayed.

BUTTERFIELD & KEENEY,
Solicitors for Complainant.

Dated March the eighth, A. D. 1888.

28 [Endorsed:] (190.) Circuit court for the county of ——, in chancery. —— ——, complainant, *vs.* —— ——, defendant. Replication. Filed this 8th day of March, 188–. F. P. Carpenter, dep. register. —— ——, solicitor for complainant.

29 STATE OF MICHIGAN:

The Circuit Court for the County of Kent. In Chancery.

JOHN BUTLER, Complainant,
vs.
THE GRAND RAPIDS & INDIANA RAILROAD COMPANY, CONTINENTAL Improvement Company, George W. Cass, and Philadelphia Trust, Safe Deposit and Insurance Company, Defendants.

SIR: You will please take notice that by the filing of replication this day in said cause to the joint and several answers of the de-

fendants Grand Rapids and Indiana Railroad Company, Continental Improvement Company, George W. Cass, and Philadelphia Trust, Safe Deposit and Insurance Company said cause is now at issue as to all of the defendants therein.

Dated March 8, A. D. 1888.

Yours, &c., BUTTERFIELD & KEENEY,
Sol'rs for Compl't.

To T. J. O'Brien, Esq., sol'r for said def'ts.

30 STATE OF MICHIGAN, } ss:
County of Kent. }

Willard F. Keeney, of the city of Grand Rapids, in said county, being of lawful age and duly sworn, doth depose and say that on the 8th day of March, A. D. 1888, he personally served on Thomas J. O'Brien, the solicitor for the defendants in the above and foregoing entitled cause, a notice that said cause was at issue, of which notice the foregoing paper writing is a true copy, by delivering the same to him, the said Thomas J. O'Brien, in person, at his office, in the city of Grand Rapids, in said county.

And further deponent says not.

WILLARD F. KEENEY.

Subscribed and sworn to before me — 9th day of March, A. D. 1888.

MARY B. CAMPBELL,
Notary Public in and for Kent County, Mich.

31 STATE OF MICHIGAN:

The Circuit Court for the County of Kent. In Chancery.

JOHN BUTLER, Complainant,
vs.
THE GRAND RAPIDS & INDIANA RAILROAD COMPANY, Continental Improvement Company, George W. Cass, and Philadelphia Trust, Safe Deposit and Insurance Company, Defendants.

SIR: You will please take notice that we claim the right under the statute to an examination of all the witnesses in this cause in open court, as in a suit at law.

Dated March 9, A. D. 1888.

Yours, &c., BUTTERFIELD & KEENEY.

To T. J. O'Brien, sol'r for def'ts.

32 STATE OF MICHIGAN, } ss:
County of Kent, }

Mary B. Campbell, of the city of Grand Rapids, in said county, being of lawful age and duly sworn, doth depose and say that on the 10th day of March, A. D. 1888, she personally served a notice

in the above and foregoing entitled cause by delivering the same to him, the said Thomas J. O'Brien, in person, at his office, in the city of Grand Rapids, in said county; and further deponent says not.

MARY B. CAMPBELL.

Subscribed and sworn to before me this 10th day of March, A. D. 1888.

C. VAN CLEVE GANSON,
Notary Public in and for Kent County, Michigan.

33 STATE OF MICHIGAN:

The Circuit Court for the County of Kent. In Chancery.

JOHN BUTLER, Complainant,
vs.
THE GRAND RAPIDS & INDIANA RAILROAD COMPANY, Continental Improvement Company, George W. Cass, and Philadelphia Trust, Safe Deposit and Insurance Company, Defendants.

To the circuit court for the county of Kent, in chancery:

The petition of John Butler, the above-named complainant, respectfully shows unto this honorable court that on the 9th day of September, 1887, he exhibited his bill of complaint in this court against the above-named defendants for the purpose of removing the cloud from his title to certain lands in said bill particularly described, which was created by the claims of title of the above-named defendants as in said bill specifically set forth, and for the purpose of quieting the title of complainant to said lands; that the said defendants, Grand Rapids and Indiana Railroad Company, Continental Improvement Company, George W. Cass, and The Philadel- Trust, Safe Deposit and Insurance Company, caused their appearance to be entered therein and their answer to said bill to be filed; that replication thereto was thereafter duly filed by said complainant and afterwards notice that said cause was at issue as to all the defendants was duly served by complainant and an examination of witnesses in open court was in due form demanded by him, and proofs of service of such notice and demand were duly
34 filed; that afterwards and shortly after the middle of the month of March, 1888, and before any further proceedings were had in said cause, the defendant George W. Cass died at the city of New York, in the county and State of New York.

And your petitioner further shows that the said Philadelphia Trust, Safe Deposit and Insurance Company and George W. Cass were made parties to said suit for the reason that they claimed rights and interests in the premises described in said bill of complaint as trustees under a certain mortgage executed by the Grand Rapids and Indiana Railroad Company and Continental Improvement Company to secure the payment of certain bonds therein mentioned, which mortgage bears date the first day of October, 1869, and was recorded on the 4th day of February, 1870, in the

office of the register of deeds of said county of Kent, in Liber 29 of Mortgages, on page 390, and is claimed by defendants to cover the lands in question, to which record, for greater certainty, your petitioner craves leave to refer, and by their answer the said George W. Cass and Philadelphia Trust, Safe Deposit and Insurance Company insisted upon such claim; that continuously from the time of the exhibition of said bill of complaint down to the time of the death of said George W. Cass, as hereinbefore stated, they, the said George W. Cass and Philadelphia Trust, Safe Deposit and Insurance Company, were trustees under such mortgage and acted as such; that by the laws of the State of Michigan and by the express provisions of said mortgage itself the trust under said mortgage and the interest thereby vested in said George W. Cass and the interest claimed by him in the premises described in said bill and in the subject-matter of this litigation have been devolved upon the said Philadelphia Trust, Safe Deposit and Insurance Company as the survivor of itself and said George W. Cass.

35 And your petitioner shows that a perfect decree may be made by the court as to every part of the subject of this litigation without bringing any new parties before the court.

Your petitioner therefore prays that the death of the said defendant, George W. Cass, and the survival of the cause of action may be duly suggested upon the record of this court, and that an order be made by this court directing said suit to proceed against the said Grand Rapids and Indiana Railroad Company, Continental Improvement Company, and Philadelphia Trust, Safe Deposit and Insurance Company as defendants therein, and that such other or such further order or decree may be made in the premises as the nature of the case may require and as shall be agreeable to equity and good conscience.

And your petitioner will ever pray, etc.

JOHN BUTLER,
By WILLARD F. KEENEY,
His Agent and One of His Solicitors.

BUTTERFIELD AND KEENEY,
Solicitors and of — for Petitioner.

STATE OF MICHIGAN, } ss:
County of Kent, }

Willard F. Keeney, of the city of Grand Rapids, in said county, being of lawful age and duly sworn, doth depose and say that he is one of the solicitors for the complainant in the above-entitled cause; that he is more familiar than the complainant with the facts herein set forth, and therefore makes this affidavit and subscribed the foregoing petition in said complainant's behalf, and is properly authorized so to do; that he has read the said petition by him sub-

36 scribed as aforesaid and knows the contents thereof, and that the same is true of his own knowledge except as to matters

therein stated to be on information and belief, and that as to those matters he believes it to be true.

And further deponent says not.

WILLARD F. KEENEY.

Subscribed and sworn to before me this 11th day of April, A. D. 1888.

MARY B. CAMPBELL,
Notary Public in and for Kent County, Michigan.

37 STATE OF MICHIGAN:

The Circuit Court for the County of Kent. In Chancery.

JOHN BUTLER, Complainant,
vs.
THE GRAND RAPIDS & INDIANA RAILROAD COMPANY, CONTINENTAL Improvement Company, George W. Cass, and Philadelphia Trust, Safe Deposit and Insurance Company, Defendants.

To the circuit court for the county of Kent, in chancery:

The petition of John Butler, the above-named complainant, respectfully shows unto this honorable court that on the 9th day of September, 1887, he exhibited his bill of complaint in this court against the above-named defendants for the purpose of removing the cloud from his title to certain lands in said bill particularly described, which was created by the claims of title of the above-named defendants, as in said bill specifically set forth, and for the purpose of quieting the title of complainant to said lands; that the said defendants, Grand Rapids and Indiana Railroad Company, Continental Improvement Company, George W. Cass, and The Philadelphia Trust, Safe Deposit and Insurance Company, caused their appearance to be entered therein and their answer to said bill to be filed; that replication thereto was thereafter duly filed by said complainant, and afterward notice that said cause was at issue as to all the defendants was duly served by complainant and an examination of witnesses in open court was in due form demanded by him,
and proofs of service of such notice and demand were duly filed;
38 that afterward and shortly after the middle of the month of March, 1888, and before any further proceedings were had in said cause, the defendant George W. Cass died at the city of New York, in the county and State of New York.

And your petitioner further shows that the said Philadelphia Trust, Safe Deposit and Insurance Company and George W. Cass were made parties to said suit for the reason that they claimed rights and interests in the premises described in said bill of complaint as trustees under a certain mortgage executed by the Grand Rapids and Indiana Railroad Company and Continental Improvement Company to secure the payment of certain bonds therein mentioned, which mortgage bears date the first day of October, 1869, and was recorded on the 4th day of February, 1870, in the office of

the register of deeds of said county of Kent, in Liber 29 of Mortgages, on page 390, and is claimed by defendants to cover the lands in question, to which record for greater certainty your petitioner craves leave to refer, and by their answer the said George W. Cass and Philadelphia Trust, Safe Deposit and Insurance Company insisted upon such claim; that continuously from the time of the exhibition of said bill of complaint down to the time of the death of said George W. Cass, as hereinbefore stated, they, the said George W. Cass and Philadelphia Trust, Safe Deposit and Insurance Company, were trustees under such mortgage and acted as such; that by the laws of the State of Michigan and by the express provisions of said mortgage itself the trust under said mortgage and the interest thereby vested in said George W. Cass, and the interest claimed by him in the premises described in said bill and in the subject-matter of this litigation have been devolved upon the said Philadelphia Trust, Safe Deposit and Insurance Company as the survivor of itself and said George W. Cass.

39 And your petitioner shows that a perfect decree may be made by the court as to every part of the subject of this litigation without bringing any new parties before the court.

Your petitioner therefore prays that the death of the said defendant, George W. Cass, and the survival of the cause of action may be duly suggested upon the record of this court, and that an order be made by this court directing said suit to proceed against the said Grand Rapids and Indiana Railroad Company, Continental Improvement Company, and Philadelphia Trust, Safe Deposit and Insurance Company as defendants therein, and that such other or such further order or decree may be made in the premises as the nature of the case may require and as shall be agreeable to equity and good conscience.

And your petitioner will ever pray, etc.

JOHN BUTLER,
By WILLARD F. KEENEY,
His Agent and One of His Solicitors.

BUTTERFIELD AND KEENEY,
Solicitors and of — for Petitioner.

STATE OF MICHIGAN, } ss:
County of Kent, }

Willard F. Keeney, of the city of Grand Rapids, in said county, being of lawful age and duly sworn, doth depose and say that he is one of the solicitors for the complainant in the above-entitled cause; that he is more familiar than the complainant with the facts herein set forth, and therefore makes this affidavit and subscribed the foregoing petition in said complainant's behalf, and is properly authorized so to do; that he has read the said petition by him sub-

40 scribed as aforesaid and knows the contents thereof, and that the same is true of his own knowledge except as to matters

therein stated to be on information and belief, and that as to those matters he believes it to be true.

And further deponent says not.

WILLARD F. KEENEY.

Subscribed and sworn to before me this 11th day of April, A. D. 1888.

MARY B. CAMPBELL,
Notary Public in and for Kent County, Michigan.

41 STATE OF MICHIGAN:

The Circuit Court for the County of Kent. In Chancery.

JOHN BUTLER, Complainant,
vs.
THE GRAND RAPIDS & INDIANA RAILROAD COMPANY, CONTINENTAL Improvement Company, George W. Cass, and Philadelphia Trust, Safe Deposit and Insurance Company, Defendants.

SIR: Please take notice that the foregoing paper-writing is a true copy of a petition this day filed by the complainant in the above-entitled cause, and that we intend to move said court, on the 16th day of April, A. D. 1888, at the opening of court on that day or as soon thereafter as counsel can be heard, for the suggestion of the death of the defendant George W. Cass, upon the record — said court, and for the granting of an order directing said suit to proceed against the said Grand Rapids and Indiana Railroad Company, Continental Improvement Company, Philadelphia Trust, Safe Deposit and Insurance Company, as defendants therein, and for such other or such further order or relief as the court may think proper to grant; such application will be founded on said petition with a copy of which you are herewith served and on the records and files in this cause and on the record of the mortgage executed by said Grand Rapids and Indiana Railroad Company and Continental Improvement Company, mentioned in said petition, the same being the mortgage recorded in the office of the register of deeds of the county of
42 Kent aforesaid in Liber 29 of Mortgages, on page 390.

Dated April 11, A. D. 1888.

Yours, &c., BUTTERFIELD & KEENEY,
Sol'rs for Compl't.

To T. J. O'Brien, sol'rs for def'ts.

43 STATE OF MICHIGAN, *County of Kent,* } *ss:*

Willard F. Keeney, of the city of Grand Rapids, in said county, being of lawful age and duly sworn, doth depose and say that on the 11th day of April, A. D. 1888, he personally served on Thomas J. O'Brien, the solicitor for the defendants in the above and foregoing entitled cause, a true copy of the petition of complainant that day filed in said cause, of which the foregoing paper-writing marked

Exhibit A is a true copy, together with a notice annexed thereto, of which the foregoing paper-writing marked Exhibit B is a true copy, by delivering the same to him, the said Thomas J. O'Brien, in person, at his office, in the city of Grand Rapids, in said county.

And further deponent says not.

WILLARD F. KEENEY.

Subscribed and sworn to before me this 16th day of April, A. D. 1888.

MARY B. CAMPBELL,
Notary Public in and for Kent County, Michigan.

44 STATE OF MICHIGAN:

The Circuit Court for the County of Kent. In Chancery.

At a session of said court held at the court-house, in the city of Grand Rapids, in said county, on the 16th day of April, A. D. 1888.

Present: Hon. Robert M. Montgomery, circuit judge.

JOHN BUTLER, Complainant,
vs.
THE GRAND RAPIDS AND INDIANA RAILROAD COMPANY, Continental Improvement Company, George W. Cass, and The Philadelphia Trust, Safe Deposit and Insurance Company, Defendants.

In this cause, on reading and filing the petition in writing, duly verified, of John Butler, the above-named complainant, praying for the suggestion of the record of the death of George W. Cass, and that said cause may be directed to proceed against the surviving defendants therein named, and it appearing to the court that since the last proceedings had in this cause and shortly after the middle of the month of March, 1888, George W. Cass, one of the defendants in said cause, died, and that the interest of the said George W. Cass, under the mortgage mentioned in the bill of complaint and in said petition, and his claim of title in the premises therein mentioned and in the subject-matter of this litigation have devolved upon the said Philadelphia Trust, Safe Deposit and Insurance Company as the survivor of itself and said George W. Cass,
45 and that the cause of action herein has survived against the said defendant, and on reading and filing due proof of service on the solicitor for defendants of a copy of said petition and notice of this application, and on motion of Butterfield and Keeney, solicitors for complainant, no one appearing to object thereto, it is ordered that said suit do now proceed against the said Grand Rapids and Indiana Railroad Company, Continental Improvement Company, and Philadelphia Trust, Safe Deposit and Insurance Company as defendants.

ROBERT M. MONTGOMERY,
Circuit Judge.

Examined, countersigned, and entered by me—
CORNELIUS L. HARVEY, *Register.*

46 STATE OF MICHIGAN:

The Circuit Court for the County of Kent. In Chancery.

JOHN BUTLER, Complainant,
vs.
THE GRAND RAPIDS & INDIANA RAILROAD COMPANY, Continental Improvement Company, George W. Cass, and Philadelphia Trust, Safe Deposit and Insurance Company, Defendants.

Note of Issue.

This cause belongs to the 4th class and is to be heard on pleadings and proofs in open court, and is entitled to priority from the 8th day of March, A. D. 1888.

Butterfield & Keeney, solicitors for complainant.
T. J. O'Brien, Esq., solicitor for defendants.

To Cornelius L. Harvey, register of said court:

Please place the above cause on the calendar for May term, A. D. 1888.

Yours, &c., BUTTERFIELD & KEENEY,
Sol'rs for Compl't.

47 STATE OF MICHIGAN:

The Circuit Court for the County of Kent. In Chancery.

JOHN BUTLER, Complainant,
vs.
THE GRAND RAPIDS & INDIANA RAILROAD COMPANY, Continental Improvement Company, George W. Cass, and Philadelphia Trust, Safe Deposit and Insurance Company, Defendants.

Note of Issue.

This cause belongs to the 4th class and is to be heard on pleadings and proofs in open court, and is entitled to priority from the 8th day of March, A. D. 1888.

Butterfield & Keeney, solicitors for complainant.
T. J. O'Brien, Esq., solicitor for defendants.

To Cornelius L. Harvey, register of said court:

Please place the above cause on the calendar for September term, A. D. 1888.

Yours, &c., BUTTERFIELD & KEENEY,
Sol'rs for Compl't.

48 STATE OF MICHIGAN:

The Circuit Court for the County of Kent. In Chancery.

JOHN BUTLER, Complainant,
vs.
THE GRAND RAPIDS & INDIANA RAILROAD COMPANY, Continental Improvement Company, George W. Cass, and Philadelphia Trust, Safe Deposit and Insurance Company, Defendants.

Not- of Issue.

This cause belongs to the 4th class and is to be heard on pleadings and proofs in open court, and is entitled to priority from the 8th day of March, A. D. 1888.

Butterfield & Keeney, solicitors for complainant.
T. J. O'Brien, Esq., sol'r for defe'ts.

To Cornelius L. Harvey, register of said court:

Please place the above cause on the calendar for December term, A. D. 1888.

Yours, &c.,

BUTTERFIELD & KEENEY,
Sol'rs for Compl't.

49 STATE OF MICHIGAN:

The Circuit Court for the County of Kent. In Chancery.

JOHN BUTLER, Complainant,
vs.
THE GRAND RAPIDS & INDIANA RAILROAD COMPANY, Continental Improvement Company, George W. Cass, and Philadelphia Trust, Safe Deposit and Insurance Company, Defendants.

Note of Issue.

This cause belongs to the 4th class and is to be heard on pleadings and proofs in open court, and is entitled to priority from the 8th day of March, A. D. 1888.

Butterfield & Keeney, solicitors for complainant.
T. J. O'Brien, solicitor for defendants.

To Cornelius L. Harvey, register of said court:

Please place the above cause on the calendar for March term, A. D. 1889.

Yours, &c.,

BUTTERFIELD & KEENEY,
Sol'rs for Compl't.

50 STATE OF MICHIGAN:

The Circuit Court for the County of Kent. In Chancery.

JOHN BUTLER, Complainant,
vs.
THE GRAND RAPIDS & INDIANA RAILROAD COMPANY, CONTINENTAL Improvement Company, George W. Cass, and Philadelphia Trust, Safe Deposit and Insurance Company, Defendants.

Not- of Issue.

This cause belongs to the 4th class and is to be heard on pleadings and proofs in open court, and is entitled to priority from the 8th day of March, A. D. 1888.

Butterfield and Keeney, solicitors for compl't.
T. J. O'Brien, Esq., solicitors for defendants.

To Cornelius L. Harvey, register of said court:

Please place the above cause on the calendar for May term, A. D. 1889.

Yours, &c., BUTTERFIELD & KEENEY,
Sol'rs for Compl't.

51 STATE OF MICHIGAN:

The Circuit Court for the County of Kent. In Chancery.

JOHN BUTLER, Complainant,
vs.
THE GRAND RAPIDS & INDIANA RAILROAD COMPANY, CONTINENTAL Improvement Company, William H. Barnes, and Philadelphia Trust, Safe Deposit and Insurance Company, Defendants.

Note of Issue.

This cause belongs to the 4th class and is to be heard on pleadings and proofs in open court, and is entitled to priority from the 8th day of March, A. D. 1888.

Butterfield & Keeney, solicitors for complainant.
T. J. O'Brien, solicitor for defendants.

To Cornelius L. Harvey, register of said court:

Please place the above cause on the calendar for December term, A. D. 1889.

Yours, &c., BUTTERFIELD & KEENEY,
Sol'rs for Compl't.

52 STATE OF MICHIGAN:

The Circuit Court for the County of Kent. In Chancery.

JOHN BUTLER, Complainant,
vs.
THE GRAND RAPIDS & INDIANA RAILROAD COMPANY, CONTINENTAL Improvement Company, William H. Barnes, and Philadelphia Trust, Safe Deposit and Insurance Company, Defendants.

Not- of Issue.

This cause belongs to the 4th class and is to be heard on pleadings and proofs in open court, and is entitled to priority from the 8th day of March, A. D. 1888.

Butterfield & Keeney, solicitors for complainant.

T. J. O'Brien, solicitor for defendants.

To Cornelius L. Harvey, register of said court:

Please place the above cause on the calendar for March term, A. D. 1890.

Yours, &c., BUTTERFIELD & KEENEY,
Sol'rs for Compl't.

53 STATE OF MICHIGAN:

The Circuit Court for the County of Kent. In Chancery.

JOHN BUTLER, Complainant,
vs.
THE GRAND RAPIDS & INDIANA RAILROAD COMPANY, CONTINENTAL Improvement Company, Wm. H. Barnes, and Philadelphia Trust, Safe Deposit and Insurance Company, Defendants.

Note of Issue.

This cause belongs to the fourth class and is to be heard on pleadings and proofs in open court, and is entitled to priority from the 8th day of March, A. D. 1888.

Butterfield & Keeney, solicitors for complainants.

T. J. O'Brien, Esq., solicitor for defendants.

To Cornelius L. Harvey, register of said court:

Please place the above cause on the calendar for May term, A. D. 1890.

Yours, &c., BUTTERFIELD & KEENEY,
Solicitors for Compl't.

54 STATE OF MICHIGAN:

The Circuit Court for the County of Kent. In Chancery.

JOHN BUTLER, Complainant,
vs.
THE GRAND RAPIDS & INDIANA RAILROAD COMPANY, CONTINENTAL Improvement Company, and Philadelphia Trust, Safe Deposit and Insurance Company, Defendants.

Whereas, since the granting of the order of the date the 16th day of April, 1888, heretofore made in this cause, reciting the death of George W. Cass and directing that said suit proceed against the said Grand Rapids and Indiana Railroad Company, Continental Improvement Company, and Philadelphia Trust, Safe Deposit and Insurance Company as defendants, William H. Barnes has been appointed by this court as the successor of said George W. Cass in his trust:

Now, therefore, it is stipulated that William H. Barnes be made a party to this suit in the place of said George W. Cass, deceased, and, inasmuch as said William H. Barnes became trustee after the institution of this suit, it is understood that it is the intention of the parties hereto that complainant be put to no further proof as against him than would be necessary against said George W. Cass if he were alive and a party to this action.

Dated Grand R-pids, July 8, 1890.

BUTTERFIELD & KEENEY,
Sol'rs for Compl't.
T. J. O'BRIEN, *Sol'r for Def't.*

55 STATE OF MICHIGAN:

The Circuit Court for the County of Kent. In Chancery.

JOHN BUTLER, Complainant,
vs.
GRAND RAPIDS AND INDIANA RAILROAD COMPANY, CONTINENTAL Improvement Company, William H. Barnes, and Philadelphia Trust, Safe Deposit and Insurance Company, Defendants.

Complainant's Bill of Costs.

Solicitors' fee by rule, hearing on pleadings, and proofs....	$30 00
Sheriff's fees, see return, cash paid service subpœna on Grand Rapids and Indiana Railroad Company.....	1 10
Register's fees.....	14 00
Commissioner's fees, fees commissioner taking deposition Ezekiel W. Barnes, as per commissioner's return.....	4 60
Register of deeds, cash paid recording notice *lis pendens*...	50
Stenographer's fees.....	3 00

Witness fees:

	Days.	Miles.		
James D. Lyon	1	1	1 10	
Patrick J. Britton	1	1	1 10	
Remmelt Koning	1	2	1 20	
Thomas W. Greenley	2	2	2 20	
Maxim Ringuette	2	2	2 20	
Thomas Berry	2	2	2 20	
Thomas W. Porter	5	1	5 10	
Thomas Dorus	1	1	1 10	
James A. Rumsey	1	2	1 20	
James A. Rumsey, Jr.	1	2	1 20	
Nathaniel Rice	1	2	1 20	
Herman Van Aalderman	1	1	1 10	
John T. Holmes	1	1	1 10	
Ezekiel W. Barnes	1	1	1 10	
Attendance before commissioner	..	..	....	
			23 10	23 10
				76 30

56 The travel of all the witnesses above named being from Grand Rapids, Michigan.

STATE OF MICHIGAN, } ss:
County of Kent, }

John Butler, of the city of Grand Rapids, in said county, being of lawful age and duly sworn, doth depose and say that he is the complainant in the above-entitled cause and is familiar with the facts herein set forth; that the several items of disbursements and fees of officers of the court charged in the foregoing bill of costs have been actually and necessarily paid or incurred according to his best information and belief, and that the same were necessary and are reasonable in amount; that the witnessess above named were in good faith made to attend and were deemed material and necessary, and that they respectively travelled the number of miles and actually attended the number of days specified; that the travel of the witnesses aforesaid was from their respective places of residence, which places of residence are set forth in said bill of costs; that the place of residence of each of the witnesses named in said bill is the city of Grand Rapids, Kent county, Michigan; that the distance of travel charged for are the distances travelled by said witnesses respectively in coming to said place of attendance.

And further deponent saith not.

JOHN BUTLER.

Subscribed and sworn to before me this 22nd day of May, A. D. 1890.

MARY B. CAMPBELL,
Notary Public in and for Kent County, Michigan.

57 STATE OF MICHIGAN, } ss:
County of Kent, }

Willard F. Keeney, of the city of Grand Rapids, in said county, being duly sworn, doth depose and say that he is one of the solicitors for the complainant in the above-entitled cause; that the several items of disbursements and fees of officers of the court charges in the foregoing bill of costs have been actually and necessarily paid or incurred according to his best information and belief.

And further deponent says not.

WILLARD F. KEENEY.

Subscribed and sworn to before me this 22nd day of May, A. D. 1890.

MARY B. CAMPBELL,
Notary Public in and for Kent County, Michigan.

To T. J. O'Brien, Esq., solicitor for defendants:

Take notice the above is a true and correct copy of complainant's bill of costs in this cause and of the affidavit of disbursements required by rule. Application will be made to the register of said court, at his office, in the city of Grand Rapids, Michigan, on the 28th day of May, 1890, at nine o'clock a. m., to tax the same.

Dated at Grand Rapids, Michigan, May 20th.

Yours, &c., BUTTERFIELD & KEENEY,
Sol'rs for Compl't.

58 STATE OF MICHIGAN, } ss:
County of Kent, }

Mary B. Campbell, of said county, being of lawful age and duly sworn, doth depose and say that on the 24th day of May, 1890, she personally served on Thomas J. O'Brien, Esq., the solicitor for the defendants in the above and foregoing entitled cause, a true copy of the foregoing bill of costs and affidavits and a notice of application for taxation, of which the foregoing notice is a true copy, by delivering the same to him, the said O'Brien, in person, at his office, in the city of Grand Rapids, Kent county, Michigan.

And further deponent says not.

MARY C. CAMPBELL.

Subscribed and sworn to before me this 27th day of May, A. D. 1890.

C. VAN CLEVE GANSON,
Notary Public in and for Kent County, Mich.

I hereby tax the foregoing bill of costs at the sum of seventy-six and $\frac{30}{100}$ dollars.

CORNELIUS J. DE YOUNG,
Deputy Register in Chancery.

Dated Grand Rapids, Mich., May 28, 1890.

59 STATE OF MICHIGAN:

The Circuit Court for the County of Kent. In Chancery.

JOHN BUTLER, Complainant,
vs.
THE GRAND RAPIDS AND INDIANA RAILROAD COMPANY, THE Continental Improvement Company, and William H. Barnes and The Philadelphia Trust, Safe Deposit and Insurance Company, Trustees, Defendants.

In this cause, the proofs having been taken in op-n court before William E. Grove, one of the judges of said court, and the testimony of witnesses and other proceedings on hearing taken by Henry F. Walch, stenographer of said court, in stenographic notes, and the court having given final decree in favor of the complainant, and the defendants desiring to remove the case by appeal to the supreme court of this State and to settle the case, setting forth the evidence at large, under the statute, I, William E. Grove, judge of said court as aforesaid, do hereby certify that it is necessary to procure a transcript of the said stenographer's notes of the testimony and proceedings upon the trial in this cause in order to prepare the record for hearing in the supreme court.

Dated Grand Rapids, May 27, 1890.

WILLIAM E. GROVE,
Circuit Judge.

60 STATE OF MICHIGAN:

The Circuit Court for the County of Kent. In Chancery.

JOHN BUTLER, Complainant,
vs.
THE GRAND RAPIDS AND INDIANA RAILROAD Company, The Continental Improvement Company, and William H. Barnes and The Philadelphia Trust, Safe Deposit and Insurance Company, Trustees, Defendants.
Claim of Appeal to Supreme Court.

The said defendants aver that the final decree of this court in favor of the said complainant in this cause, filed and entered with the register of this court on the 17th day of May, 1890, is not in accordance with the just rights of these defendants and they are aggrieved thereby, and hereby claim an appeal therefrom to the supreme court of this State.

June 12, 1890.

T. J. O'BRIEN,
Sol'r for Def'ts.

61 STATE OF MICHIGAN:

The Circuit Court for the County of Kent. In Chancery.

JOHN BUTLER, Complainant,
vs.
THE GRAND RAPIDS AND INDIANA RAILROAD COMPANY, THE Continental Improvement Company, and William H. Barnes and The Philadelphia Trust, Safe Deposit and Insurance Company, Trustees, Defendants.

GENTLEMEN: Take notice that the above-named defendants have this day filed with the register of this court a claim of appeal to the supreme court of this State from the final decree entered in this cause on the 17th day of May, 1890, and that a true copy of the claim so filed is hereunto annexed.

Also take notice that the said defendants have prepared a bond on appeal executed by the said defendants, with William O. Hughart and Thomas J. O'Brien, of the city of Grand Rapids, in said county, as sureties, in the penal sum of five hundred dollars, conditioned for the performance and satisfaction of the decree or final order of the supreme court in said cause and the payment of all costs awarded to John Butler, complainant and appellee in the matter of said appeal.

Also take notice that a motion for the approval of such bond will be made before Hon. William E. Grove, judge of said court, at his chambers in the city of Grand Rapids, in said county of Kent, on the 21st day of June, inst., at 9 o'clock in the forenoon.

62 Dated Grand Rapids, June 12, 1890.

T. J. O'BRIEN,
Sol'r for Def'ts.

To Messrs. Butterfield & Keeney, sol'rs for compl't.

COUNTY OF KENT, *ss:*

James H. Campbell, being duly sworn, deposes and says that on the 12th day of June, 1890, he served on Butterfield & Keeney, solicitors for the complainant above named, a notice of which the foregoing is a true copy and a true copy of the annexed claim of appeal, by delivering the same to Roger W. Butterfield, Esq., one of said solicitors, personally at his office.

JAMES H. CAMPBELL.

Subscribed and sworn to before me this 13th day of June, 1890.

WM. C. VANDERBERG,
Notary Public, Kent Co., Mich.

63 STATE OF MICHIGAN:

The Circuit Court for the County of Kent. In Chancery.

JOHN BUTLER, Complainant,
vs.
THE GRAND RAPIDS AND INDIANA RAILROAD COMPANY, THE Continental Improvement Company, and William H. Barnes and The Philadelphia Trust, Safe Deposit and Insurance Company, Trustees, Defendants.

The said defendants aver that the final decree of this court in favor of the said complainant in this cause, filed and entered with the register of this court on the 17th day of May, 1890, is not in accordance with the just rights of these defendants and they are aggrieved thereby, and hereby claim an appeal therefrom to the supreme court of this State.

June 12, 1890.

T. J. O'BRIEN,
Sol'r for Defendants.

64 Know all men by these presents that the Grand Rapids and Indiana Railroad Company, a corporation organized under the laws of the State of Michigan and Indiana, for itself and for and on behalf of its codefendants, The Continental Improvement Company, a corporation organized under the laws of the State of Pennsylvania, and The Philadelphia Trust, Safe Deposit and Insurance Company, a corporation organized under the laws of the State of Pennsylvania, and William H. Barnes, of Philadelphia, in the State of Pennsylvania, principals, and William O. Hughart and Thomas J. O'Brien, of the city of Grand Rapids, in the State of Michigan, as sureties, are held and firmly bound unto John Butler, of the city of Grand Rapids, in the sum of five hundred dollars, to be paid to the said John Butler or to his certain attorney, executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves and our successors, heirs, executors, and administrators respectively, jointly and severally, firmly by these presents.

Sealed with out seals and dated this 12th day of June, 1890.

The condition of this obligation is such that whereas the circuit court for the county of Kent, in the State of Michigan, in chancery, made its final decree in favor of the complainant in a certain cause therein pending wherein the said John Butler was complainant and the above-named principlas were defendants, white decree was filed and entered with the register of said court on the 17th day of May, 1890;

And the said defendants, the principals above named, have duly claimed and taken an appeal from said decree to the supreme court of the State of Michigan:

Therefore, if the above-bounden principals shall well and truly perform and satisfy the decree or final order of the said
65 supreme court in said cause and shall pay all costs awarded to the said John Butler, complainant and appellee in the matter

of said appeal, then the preceeding obligation shall be void; otherwise to remain of full force and virtue.

THE GRAND RAPIDS & INDIANA RAILROAD COMPANY,
By W. O. HUGHART, [L. S.]
THOMAS J. O'BRIEN. [L. S.]

[CORPORATE SEAL OF G. R. & I. R. R. CO.]

Signed, sealed, and delivered in presence of—
JAMES H. CAMPBELL.

STATE OF MICHIGAN, } ss:
County of Kent, }

I do hereby approve of the sufficiency of William O. Hughart and Thomas J. O'Brien as sureties in the foregoing bond, and of the sum of five hundred dollars as the penalty thereof.

Dated June 21, 1890.

WM. E. GROVE,
Circuit Judge.

66 STATE OF MICHIGAN:

The Circuit Court for the County of Kent. In Chancery.

JOHN BUTLER, Complainant,
vs.
THE GRAND RAPIDS AND INDIANA RAILROAD COMPANY, THE Continental Improvement Company, and William H. Barnes and The Philadelphia Trust, Safe Deposit and Insurance Company, Trustees, Defendants.

GENTLEMEN: Please to take notice that on the 21st day of June, inst., the appeal bond in this cause, of which you have heretofore had notice, was duly approved by Honorable William E. Grove, judge of said court, and his approval thereof endorsed thereon, and said bond so approved was on the same day filed with the register of this court, and that thereby the appeal to the supreme court in this cause has become, and is, perfected.

Dated Grand Rapids, June 23, 1890.

Yours, &c.,
T. J. O'BRIEN,
Sol'r for Defendants.

To Messrs. Butterfield & Keeney, sol'rs for compl't.

67 STATE OF MICHIGAN, } ss:
County of Kent, }

Wm. C. Vandenberg, being duly sworn, deposes and says that on the 23rd day of June, 1890, he served upon Butterfield & Keeney, solicitors for complainant, in the cause within entitled, a notice of which a true copy is hereto annexed, by delivering the same to Willard F. Keeney, one of said solicitors, personally.

WM. C. VANDENBERG.

Subscribed and sworn to before me this 23rd day of June, 1890.

ELIZABETH HANNA,
Notary Public, Kent Co., Mich.

69 IV.—*Proofs.*

STATE OF MICHIGAN:

In the Circuit Court of the County of Kent. In Chancery.

JOHN BUTLER, Complainant,
vs.
THE GRAND RAPIDS AND INDIANA RAILROAD COMPANY, THE Continental Improvement Company, William H. Barnes, and The Philadelphia Trust, Safe Deposit and Insurance Company, Defendants.

Case setting forth evidence at large.

The cause above entitled having been tried in open court and the witnesses in said cause (excepting Ebenezer W. Barnes) examined, and proofs taken in open court before William E. Grove, one of the judges of said court, and decree rendered in favor of the complainant, and the said defendants desiring that a case be made and settled, setting forth the evidence taken in said cause, at large, pursuant to the statute in such case made and provided—

I, William E. Grove, the said judge before whom said cause was tried, do hereby certify that the proofs—excepting the testimony of Ebenezer W. Barnes—were all taken before me in open court.

That the following-named persons were examined before me as witnesses, viz:

On the part of the complainant: Thomas W. Greenley,
70 Maxim Ringuette, Thomas Berry, James A. Rumsey, Thomas W. Porter, Nathaniel Rice, John Butler, John Doris, James Lyon, Patrick J. Britton, Herman van Alderen and John T. Holmes.

And on the part of the defendants: Ransom C. Luce, Dorr Skeels, Zenas Z. Winsor, Bilius Stocking, Selden E. Turner, Benjamin S. Hanchett, Patrick Jennings, Robert M. Barr, Abram W. Pike, Thomas Robbins, David Laraway, John McConnell, Andrew Fife, William A. Shinkman, George C. Peirce, and Joseph Penney.

The testimony of said witnesses was taken on the trial stenographically, by the official stenographer of said court.

The same has been transcribed and the full transcript of the same, being four hundred and thirty-one pages, is hereunto annexed.

There was also read in evidence, on the part of complainant, the deposition of Ebenezer W. Barnes, taken under stipulation before Mary B. Campbell, notary public. The said deposition is hereunto annexed.

There were also introduced in evidence sundry maps and other documents. The said documentary evidence is hereunto annexed, divided into thirteen chapters, the contents whereof are hereinafter fully set forth.

The said transcript, deposition, and documentary evidence constitute all the evidence produced on the trial and hearing of said cause.

All the motions, statements, objections, exceptions, and proceedings appearing in the said transcript were actually made and taken upon said trial.

In testimony whereof, I have hereunto made and settled and do hereby sign this case at the city of Grand Rapids, in said county of Kent, on the 11th day of August A. D. 1890.

WILLIAM E. GROVE,
Circuit Judge.

71 STATE OF MICHIGAN:

The Circuit Court for the County of Kent. In Chancery.

JOHN BUTLER
vs.
THE GRAND RAPIDS AND INDIANA RAILROAD COMPANY.

March Term, 1890. Before Hon. W. E. Grove, Circuit Judge.

GRAND RAPIDS, MICH., *Wednesday A. M., April 23d*, 1890.

Appearances for complainant, Roger W. Butterfield, Willard F. Keeney; for defendant, James H. Campbell.

Mr. CAMPBELL: I wish at this time to make an objection to any proceedings under this bill, and to the taking of any evidence in the case, and ask that the bill be dismissed, upon the ground that the court has no jurisdiction of a bill by this complainant, a private person, to declare null and set aside a patent issued by the Government of the United States. (Counsel argue the above point and cite authorities on either side.)

The COURT: I don't believe in this case it will be necessary, if it should be found the original patent included these lands, to decree invalid, the second patent, because a decree declaring the original patent embraced the lands and thereby establishing the complainant's title to the lands, would in effect quiet his title forever as against any one claiming under a second title.

THOMAS W. GREENLEY, sworn on behalf of the complainant, testified as follows:

Examined by Mr. BUTTERFIELD:

1 Q. You reside in the city of Grand Rapids?

A. Yes, sir.

72 2 Q. How long have you resided here?

A. Since 1845; since 1850 this time; I came here in 1845 and stayed here three years.

3 Q. What was your business in 1845 when you came here?

A. I worked for Daniel Ball on the steamboat.

4 Q. What steamboat?

A. Called the "Odd Fellow," 1845 and 1846; 1845 I did not do much at steamboating.

5 Q. Where did that steamboat run?
A. Here to Grand Haven.
6 Q. Down the Grand river, down to the mouth of the Grand river at Grand Haven?
A. Yes, sir.
7 Q. How frequent trips did it make?
A. We carried wheat; we did not make any particular time; when we got a load we came up with it.
8 Q. How often would you pass up and down the river in that year; about how frequently?
A. About three times a week, along that.
9 Q. During the navigable season?
A. Yes, sir.
10 Q. When did the season of navigation open in the Grand river?
A. Sometimes in May, sometimes a little earlier—April and May—along there.
11 Q. How long did it last?
A. Sometimes run into December.
12 Q. The ice was an impediment to navigation outside of that?
A. Yes, sir.
13 Q. What was the draught of the steamer, how much water did she draw?
A. About eighteen inches when she was light.
14 Q. When loaded how much did she draw?
A. Sometimes three feet and sometimes three and a half.
15 Q. Where did she land?
A. When she came up here?
16 Q. Yes, sir.
A. Landed generally back of Foster's store; before grab corners was taken out Foster's store run across the street front of Monroe.
73 17 Q. That is what is now Pearl street in the city of Grand Rapids?
18 Q. It is south of Pearl street, I think.
19 Q. How far to the south of Pearl street?
A. I could not state the distance.
20 Q. About?
A. It may be twenty or thirty feet, somewhere along there.
21 Q. It was opposite Island No. 1 and 2, in Grand river?
A. Yes.
22 Q. You passed between the main land and Island No. 1 or 2?
A. No, 3 I passed through.
23 Q. Coming up the river you passed through the channel on which side of Island No. 3?
A. The west side sometimes, not always.
24 Q. Just describe after you go to the—No. 3 is the large island down the river?
A. Yes, sir.
25 Q. After you passed the lower point of—after you got to the

lower point of No. 3, describe how your boat came into Grand Rapids?

Mr. CAMPBELL: I will make an objection on two grounds; on one ground, this testimony is now immaterial and irrelevant for two reasons, the first perhaps more to the order of proof than anything else. I suppose the first thing in order would be for this complainant to establish some kind of title here from the Government, the second ground in their bill they state the patent under which they claim from the United States in 1832. This witness came here in 1845. If this testimony has any relevancy in this case, whatever, it is simply describing the possible condition of things as he saw it at that time. We submit the condition then is wholly immaterial and too remote from the time when this entry of patent was made under which the complainant claims. If I understood Mr. Greenley he says he came here in 1845, twenty-three years after
74 the patent to Lyon & Hastings, under which the complainant claims. I insist on their proving title first.

Mr. BUTTERFIELD: We won't do it.

The COURT: I sit here as a circuit-court commissioner to hear proofs and I have no power to make any rulings, and the objections having been noted, the witness can answer.

Mr. BUTTERFIELD: I understand the objection to the order of proof is withdrawn and the rest stands?

Mr. CAMPBELL: Yes, sir.

(Question read.)

A. Sometimes I would come on the east side of the island and sometimes on the west side, depending something on the water and the load we had.

26 Q. Suppose you came in on the west side of Island No. 3, how would you get up to the dock?

A. Come through between the head of the island.

27 Q. Came around the head of Island No. 3?

A. Yes, sir, and No. 2.

28 Q. And No. 2?

A. Yes, sir; what we called it at that time; always been by that number as long as I lived here.

29 Q. That is the island opposite your landing place?

A. That is No. 1 and 2 together, very near.

30 Q. After you passed around the head of Island No. 3, do you remember where the old ferry used to be?

A. Yes, sir.

31 Q. That is where Fulton street is now?

A. Yes, sir.

32 Q. How far was that above the head of Island No. 3 as you recollect it at that time?

A. I should say 175 to 200 feet.

33 Q. What was there on the head of Island No. 3?

A. What was there?

34 Q. Yes.

A. Well, there was——

35 Q. (Interrupting.) State whether any trees or not.
A. There was large trees there.
75 36 Q. On the head of Island No. 3?
A. Yes, sir.
37 Q. Whether between Island No. 3 and what is now the south line of Fulton street, there was any island whatever?
A. There was not at that time, and there was not in 1854.
38 Q. There was no island at that time and there was not in 1854?

Mr. CAMPBELL: I think this witness might as well understand he is not required to volunteer any statements here. To answer the questions put to him it will be sufficient for the purposes of this case. There is a great deal of willingness to testify. He is not required to argue the case.

Mr. BUTTERFIELD: I object to the remarks of the solicitor for the defendant.

The COURT: Let us stop right here; there is no occasion for anything but to have the objections entered and let the witness proceed. There cannot be any ruling, and I believe I won't be influenced by anything but the objections.

Mr. CAMPBELL: I ask the court to instruct the witness to answer the questions put to him.

The WITNESS: I am doing that without any instructions.

39 Q. I understood you to say that after leaving the head of Island No. 3 there was no island up to Fulton street?
A. Yes, sir.
40 Q. What was the next island you met after leaving Island No. 3?
A. No. 2.
41 Q. Those are the two islands, 1 and 2 together, where the jail now stands?
A. Yes, sir.
42 Q. Just south of Pearl street?
A. Yes, sir.
43 Q. Do you know the land now occupied—do you know the land sometimes described as Island No. 5; do you know where it is?
A. I could not tell you.
44 Q. I call your attention to the land between what is
76 now Fulton street and Oak street in the city of Grand Rapids, back of the old shore line of the river, and ask you within what period that land has been formed.
A. I don't know that I can state positively when it has been formed, but it has been formed, as it naturally will behind any abutment, any island, a good many years.
45 Q. Within what time has that been formed if you can recollect?
A. Since 1850, or say sooner than that.
46 Q. How the quantity of water now flowing down Grand river

compares with the quantity flowing when you first came here in 1845, and flowed down the river?

A. It is not more than half as much water.

47 Q. Suppose there was the same amount of water in the river that ordinarily flowed into it, in Grand river at the time you came here, what would become of that low land of which I have spoken to you?

A. It would be all covered up.

48 Q. How long did you continue boating for Mr. Ball?

A. Well, from three, four, or five years; I should say now 1846 and 1847, and in the years 1850, '54, '5, and '6—five years in all.

49 Q. You have lived in Grand Rapids and been familiar with these premises ever since, have you not?

A. Yes, sir, since 1850 continuously.

50 Q. And you are able to locate the head of Island No. 3 as it was then in 1845?

A. I could not exactly, yet I could tell very near.

51 Q. What means have you of knowing?

A. That large tree—there was two, I can locate the head of the island, and some brushes on the west of the island, willows.

52 Q. So by that means you are able to determine where the head of Island No. 3 was at the time you was here?

A. Yes, sir, very near.

77 Cross-examination by Mr. CAMPBELL:

53 Q. When did you come here Mr. Greenley?

A. I came here in the spring of 1845 first.

54 Q. Had you ever been in Grand Rapids before?

A. No, sir.

55 Q. You have been here substantially ever since?

A. Yes, sir.

56 Q. When did you first go to the river?

A. 1846.

57 Q. How much of a place was there in Grand Rapids at that time, how much city or village in 1845?

A. It was not a city.

58 Q. There was a settlement here?

A. Yes, sir, there were about three thousand in 1850.

59 Q. How much was there in 1845?

A. I could not tell you.

60 Q. Where was the settled part, the built-up part of the village at the time?

A. On Monroe street, the business point.

61 Q. Near to or back from the river?

A. Back from the river.

62 Q. Was Monroe street then laid out and built upon?

A. No, not very much, there was one store there at that time.

63 Q. Was Canal street?

A. On the upper side, the east side of it, and some on the west side.

64 Q. Commencing at what is now Bridge street describe the condition of the river.

A. I could not much, because I was never so much acquainted as I was below.

65 Q. What was the furthest you ever came up?

A. I have been to Lyons city, to Lyons, in Michigan, the furthest I have ever been to.

66 Q. What part of the river were you familiar, where did you do the most boating?

A. Mostly from here to Grand Haven.

67 Q. How many trips did you make up the river?

78 A. Up one summer, one season—I could not tell how many *many* trips.

68 Q. As far as you know it, describe the condition of the east bank of the river and the river itself, as to islands, from Bridge street down to the present city limits south, as you found it in 1845?

A. Do you want I should give the lines? I don't know as I could do that. How can I describe it?

69 Q. I don't know; I ask you if you could?

Mr. BUTTERFIELD: We object to the question as irrelevant and immaterial and not cross-examination.

70 Q. The east bank of the river; describe generally the course of the east bank?

Mr. BUTTERFIELD: We object to that as not being sufficiently definite and not identifying what portion of the river he wants described.

Mr. CAMPBELL: I have stated from Bridge street down the south line of the river, the general course of the east bank of the river.

A. Runs nearly south—the east bank?

71 Q. Yes?

A. It would go some portion south, and some parts off east, and then goes west again.

72 Q. Take the present corner of Lyon and Canal street-?

A. Yes.

73 Q. As it stands today, in 1844, and the river line—how far was the north bank from that corner; the east bank?

A. The top of the bank?

74 Q. I mean the water mark?

A. It was not over twenty-five or thirty feet.

75 Q. From the present south line of Canal street?

A. Yes, sir.

76 Q. Go a block south and go to the Tower clothing store, or Pierce block, on the corner of Monroe street or Campau place

79 and Pearl street, how far was the easterly edge——

A. (Interrupting.) I misunderstood you—Lyon street?

77 Q. Yes?

A. That would run in here twenty or twenty-five feet.

78 Q. West of the present corner of Canal street?

A. Yes, sir.

79 Q. Take it up at the corner of Campau and Pearl, at the Tower clothing store?

A. I should say that not over twenty-five feet or thirty feet, I should put it.

80 Q. Take it at the corner of what is now the corner of Waterloo and Fulton streets, the southwest corner, how far was the east bank of the river, as it then run, from that place?

A. Waterloo street and Fulton street?

81 Q. Waterloo street and Fulton street, what used to be called Water street?

A. It would be—I don't know; I should say one hundred feet.

82 Q. About a hundred feet?

A. Yes, sir.

83 Q. What islands were in the river between Bridge street and the present line of Hall street in 1844?

A. Four.

84 Q. How do you describe them?

A. One island here the jail is on, and one approached by a small channel lying a little below it, No. 3 below the Fulton-street bridge, and the Robach's island, No. 4.

85 Q. Where was the island furthest north situated?

A. Furthest north?

86 Q. Yes?

A. Where the jail stands on.

87 Q. How large was that island?

A. That I could not tell you.

88 Q. About, as you recollect it now?

A. I could not say how large it was.

89 Q. Was it large or small?

A. Not very large.

90 Q. A long island or round?

A. It is round at the lower point and rather pointed up at the head.

80 91 Q. The head, you mean the north of the island?

A. Yes, sir.

92 Q. Was there any channel in Grand river, flowing east of that island in 1844?

A. Any channel?

93 Q. Yes.

A. Yes, sir.

94 Q. How wide was the channel, how far was it from the east bank of the island onto the east bank of the river?

A. Depends how much rain we had.

95 Q. Take it an ordinary water mark—of course it was lower and higher I suppose?

A. I should say sometimes 100 feet wide, probably less.

96 Q. What was it at ordinary times, seasons, in the ordinary condition of the river?

A. Sixty-five or seventy-five feet wide.

97 Q. How far below this island you have just described—do you know what the number of that island is?

A. I know what we used to call it, we called it No. 2, that is just below.

98 Q. The one you have just described, furthest north?

A. No. 1.

99 Q. That was designated as Island No. 1?

A. Yes, sir.

100 Q. The north line of the head of the island came as far north as what is now Pearl street?

A. Just ahead of it.

101 Q. Can you give any recollection of its length?

A. Of the island?

102 Q. Yes.

A. I could not tell you.

103 Q. In what general direction did it lie, straight north and south?

A. Not quite; the general way it would be northwest and southeast a little bit; not quite north and south.

104 Q. You cannot give the length of it?

A. No, sir.

105 Q. How far from that was the next island south?

A. There was a small channel between them at some stages
81 of the water, laid down below it, lapped onto it, making as we called it, two islands.

106 Q. How was this island known?

A. No. 2.

107 Q. Were there any trees growing on it then?

A. There was.

108 Q. In 1844?

A. 1845, I was not here in 1844.

109 Q. You cannot state the distance between Island No. 1 and Island No. 2?

A. Well, a jump across the creek.

110 Q. There was a small channel of the river passed in between them?

A. Yes, sir; if you can tell how far I can jump I can tell you.

111 Q. How long was this Island No. 2?

A. I should say about the same length as Island No. 1.

112 Q. How far down did it extend?

A. To the Barnard house.

113 Q. What street is that on?

A. Fulton street, corner of Fulton and Waterloo.

114 Q. You mean to say it extended down to what is now Fulton street?

A. Pretty near, not quite.

115 Q. Do you know whether or not Fulton street is on the quarter line of section 25?

A. Supposed to be.

116 Q. You have never made any examination to determine?

A. No, sir.

117 Q. Was there any channel between Island No. 2 and the bank on the east side?

A. On the east side?

118 Q. Yes, sir.

A. We used to come up pretty near there, in between the two.

119 Q. Was there a channel between Island No. 2 and the east bank of the river?

A. Of course, Island No. 2 was on the west side of Island No. 1, mostly, it ain't down below.

120 Q. I understood you to say it extended on down south?

A. It does.

121 Q. Entirely south, south of No. 1?

82 A. I did not say so; there would not be any channel between them if there was.

122 Q. Island No. 2 lay just west?

A. Lay west of Island No. 1.

123 Q. And extended some distance south of it?

A. Yes, sir, and lapped up some on it.

124 Q. Was the head of Island No. 2 as far north as the head of Island No. 1?

A. No, sir.

125 Q. It lay further down the river?

A. Yes, sir.

126 Q. How much further?

A. Half way.

127 Q. How far south of the south line of Island No. 1 did south line of Island No. 2 extend?

A. I could not tell you, reached down very near the Barnard house.

128 Q. Of course the channel was west. You have mentioned Island No. 3?

A. Yes, sir.

129 Q. What did you come to in the shape of islands next below No. 1 and 2?

A. Three.

130 Q. How far was that below?

A. Two hundred feet, I should say, 175 to 200 feet below the head of that island as it was.

131 Q. Below which island?

A. No. 2.

132 Q. How far did that island lay from the east bank of the river?

A. Three?

133 Q. Yes?

A. Oh! the channel was widened out a little bit on that side; depend on the stage of the water?

134 Q. Take an ordinary stage, what was the width of the channel?

A. About 75 feet.

135 Q. You say the channel between Island No. 3 and the east bank was 75 feet?

A. I should say it was at ordinary stages of water.

136 Q. Describe Island No. 3 as you found it in 1845. Describe

first about where the head of it was. I think you stated it was about at Fulton street?

Mr. BUTTERFIELD: That is objected to.

A. I did not make any such statement.

83 137 Q. State?

A. I should think twenty-five or thirty feet from where the trees are now, if you can get at that point.

138 Q. To what trees do you refer?

A. Trees, there is only one tree left there, on the head of the island, very near.

139 Q. Where does that tree stand?

A. The head of island.

140 Q. How do you identify that tree?

A. How do I?

141 Q. Have you known it for these forty-five years?

A. Yes sir.

142 Q. Did you state that marked the head of Island No. 3?

A. Very near.

143 Q. Did it extend any north of it at all?

A. Oh! yes.

144 Q. How far?

A. I should say twenty-five or thirty feet.

145 Q. North of that tree?

A. Yes, sir, maybe not quite as much; I could not account for what amount of dirt has been washed away.

146 Q. You are giving your recollection of it as you saw it then?

A. Yes, sir.

147 Q. How long was Island No. 3?

A. That I could not state.

148 Q. How far down did it extend, if you know?

A. The present location you mean?

149 Q. You have located the south end of the island?

A. No, sir.

150 Q. The south end is there yet, the one they go around to the steamboat landing?

A. Yes, sir, the south end has been dredged out.

151 Q. How much has it been filled?

A. Filled about 150 feet.

152 Q. There is a considerable body of water around in the west of the island yet?

A. Yes, sir.

84 153 Q. East of the island, I mean?

A. Yes, sir; I don't know whether that line—what street would be the line of that, I should say Wealthy avenue, but—I don't know; I don't know where that comes.

154 Q. You have mentioned another island, Robach's island; where was that?

A. Half a mile down.

155 Q. Lower down?

A. Yes, sir.

156 Q. The steamboat landing in 1845 was at what place?

A. Back of the Tower block, right in there about half way of the Tower block; beyond the Tower block a little ways.

157 Q. To reach that island did you ever go up the river north of Islands No. 1 and 2 and come in that way?

A. No, sir.

158 Q. Came down the channel?

A. Never came in that way.

159 Q. In coming from Grand Haven what was your usual course?

A. Sometimes this, the east side of that Island No. 3, and sometimes around the head of it.

160 Q. Did you have any rule on that subject?

A. No, sir, no particular rule; if we took a notion to come into the head we come in that way.

161 Q. You came in through the south channel—coming from the south you came in into the east of the south end of Island No. 3?

A. Yes, sir.

162 Q. And then go on north between those islands and the east bank of the river to the steamboat landing?

A. Yes, sir.

163 Q. The steamboat landing was then on the east bank of Grand river and west of Islands No. 1 and 2?

A. Some of it.

164 Q. Did it extend further north?

A. Yes, sir; we had a dock past Pearl street.

165 Q. How far was this landing from the present line of Pearl street?

A. What one?

85 166 Q. The one that you speak of as south of it?

A. Could not have been a great ways, I think, from the location of them buildings; they are taken away.

167 Q. I think you described the size and draft of the boat you run. How long did you run on the river; how many seasons?

A. Two or three or five; from three to five years; I don't recollect exactly.

168 Q. You say you came back and have lived in Grand Rapids continuously since 1850?

A. Yes, sir.

169 Q. Have you ever run on the river since?

A. Yes, sir.

170 Q. In what seasons?

A. 1855, '56 and '54.

171 Q. You spoke of a ferry. Describe that, please; where did that ferry run?

A. From the back of the Barnard house as it stands now, across the river.

172 Q. By whom was the ferry operated when you came here?

A. I don't know.

173 Q. Do you remember the name?

A. I do not.

174 Q. Was there a dock, or wharf, or landing?
A. Yes, sir.
175 Q. Was it used for any other than ferry purposes?
A. Sometimes we would stop there.
176 Q. This Barnard house is on Fulton street, is it not?
A. Corners on Fulton and Waterloo.
177 Q. You say if there was as much water in the river now as in 1845, these islands would be covered up?
A. Yes, sir.
178 Q. These Islands Nos. 1, 2 and 3?
A. No, I did not say that.
179 Q. What do you mean?
A. I mean to tell the truth.
180 Q. You said if there was as much water now as then something would be covered?
A. Some of the ground that lay below Fulton street
86 181 Q. Some of Island No. 3?
A. No, sir; it is not some of Island No. 3.

Redirect examination by Mr. BUTTERFIELD:

182 Q. Do you remember about a little creek running into the Grand river about where Fulton is now?
A. There was a spring along there, but I don't recollect the stream, we used to have a spring along there, we used to get water.
183 Q. You are able to determine what the south end of 2 Island now is, is there any way in which you could determine?
A. That old dock that ends there, some portion belonged to it.
184 Q. That is an old dock on the east side of the channel?
A. That would cover the distance down to No. 2 Island; that is the only point I have got.
185 Q. Don't the present Grand Rapids and Indiana bridge cross No. 2 Island?
A. Yes, sir.
186 Q. Does not it cross on the lower point on 2 Island as it was?
A. Certainly, pretty near I should say.
187 Q. You don't undertake to fix the distance between the lower point of Island No. 2 and the upper point of Island No. 3 accurately?
A. No, sir, not accurately, I could not do that.
188 Q. How much distance is there between what is now the south line of Fulton street and the head of Island No. 3?
A. As it is you mean?
189 Q. No, as it was then, if you know; taking the south line of Fulton street as a basis, what was the distance from what is now the south line of Fulton street, where that spring came in there, down to Island No. 3?
A. I should think two hundred feet.
190 Q. And this same tree that was on the head of Island No. 3 is there now?

A. One of them.

191 Q. It is the large tree that is furthest north?

A. A sycamore tree at that.

87 192 Q. The large tree that stands nearest Fulton street?

A. The largest tree; it is getting dilapidated now.

Recross-examination by Mr. CAMPBELL:

193 Q. You don't know how far that is south of Fulton street now, you have not made any measurement?

A. No, sir, I have not.

194 Q. I wish you would describe the surface of the island there also, as you found it in 1845? How wide was that island?

A. All I know about that island—I did not take any observation of the surface of that island; I have been told there was four acres there, that is all I know about that island. The general shape of the island I could tell you.

Redirect examination by Mr. BUTTERFIELD:

195 Q. You never went on the island to see what there was on it?

A. No, sir, I have never been on the island.

196 Q. You simply saw it as you came up the river?

A. Yes, sir.

Recross-examination by Mr. CAMPBELL:

197 Q. You were asked on the direct examination as to whether there was any island between No. 1 and 2 and Island No. 3 in 1845, and you said there was not.

A. I said so?

198 Q. You said there was not any there until 1854; was that the statement?

A. No, I did not say that particularly; the sand was forming on the foot of Island No. 2.

199 Q. You mean Island No. 2 was building up?

A. Yes, sir.

200 Q. You say there was no separate island between the two in 1854?

A. No, sir.

201 Q. Between No. 2 and 3?

A. No, sir.

MAXIM RINGUETT, being duly sworn on behalf of the complainant, testified as follows:

Examined by Mr. BUTTERFIELD:

88 1 Q. What is your occupation and where do you now reside?

A. On South Division street.

2 Q. And your occupation is what?

A. Shoemaker.

3 Q. How long have you lived in the city of Grand Rapids?

A. Since 1836.

4 Q. 1836?

A. Yes, sir.

5 Q. What is your age at the present time?

A. I am about 76, going on 77.

6 Q. What season, what part of 1836, did you come here?

A. In the spring I guess, about the first of May, something of that; I don't say the first, but about the first of May.

7 Q. In the month of May?

A. Yes, sir.

8 Q. What did you first go to work at?

A. Well, when I first worked four or five days on to Island No. 3.

9 Q. That is an island down in the river here?

A. Yes, sir.

10 Q. What was that work?

A. Planting corn.

11 Q. What was your business for the balance of 1836?

A. I worked on a pole-boat.

12 Q. A pole-boat is a boat you propelled by means of a pole on the side?

A. Yes, sir.

13 Q. From what points did you run that boat?

A. From Grand Haven here, and then we made two or three trips from here to Lyons, Ionia, and the balance of the time I boated to 1836, all summer, and 1837 during the month of July; then I stopped; then I started a shoe shop.

14 Q. During the time you were engaged on the pole-boat how frequent trips did you make, how often come up and down?

A. That is hard to tell; sometimes make twice a week—well generally, sometimes, probably some week with Sunday, three times a week, but not very often—twice a week.

89 15 Q. Where did your pole-boat use to stop?

A. Back of the store this side of Fulton.

16 Q. What is known as the Godfrey warehouse?

A. Yes, sir.

17 Q. There were two warehouses there, were there not?

A. Yes, sir.

18 Q. One was a white one and the other was a red one?

A. Yes, sir.

19 Q. Which was the red one?

A. Uncle Campau and the boat belonged to Godfrey, and the store belonged to Godfrey, too.

20 Q. By Godfroy, what Godfroy, Richard?

A. Richard Godfroy.

21 Q. He kept a trading-house with the Indians and other people?

A. Yes, sir, he traded in those days.

22 Q. Do you know where the head of Island No. 3 was in 1836, when you knew it?

A. Yes, I must have known it; I was on here often.

23 Q. Is there any way in which you are able now to state where it was?

A. I don't see except what a man can see now of those two trees; those two trees was on, right on the edge of the island, on the north side.

24 Q. Those two trees that now stand—one of which now stands there—were on the north end of Island No. 3?

A. Yes, sir.

25 Q. And was the sycamore tree one of them, was it—you don't recollect the kind of tree?

A. No, I was not much acquainted with wood at that time.

26 Q. Now much acquainted with wood?

A. No, sir.

27 Q. Do you know whether one of those trees is standing there now?

A. I guess he does.

28 Q. Standing there the last you saw of it?

A. Yes, sir.

29 Q. How long ago was that?

A. Last July, I guess. I saw one of them anyhow.

90 30 Q. Of the last year?

A Yes, sir.

31 Q. Between that tree as it now stands and where Fulton street now is, the south line of Fulton street, was there any island at all?

A. I just called that a sand bar, was a creek between that sand bar, under that Island No. 3, a creek of water used to run from Grand river from that channel.

32 Q. How far did that sand bar run up from the head of Island No. 3?

33 A. Run up; in high water you cannot see nothing except brush willow, and when it is very low water you can see probably two or three rod-. Probably I say a little too much; I never took much notice, understand, only I give that by guess. That swamp on that was very soft.

34 Q. How far did this soft point of bushes or land extend above Island No. 3? How far did it run above those trees on Island No. 3?

A. Just began right off except a little creek, not ten feet, five or six feet of that swamp.

35 Q. On the north side of this tree you say there was a little creek?

A. Yes, sir.

36 Q. On the other side—that is a little channel?

A. No, that is a sand bar what I call it.

37 Q. How far did this sand bar run north of the tree?

A. Well, in 1836 that was very small, only it shows, that is all. Then you can see it grow after that; I don't recollect exactly—well, you can put about a 100 feet or 150 feet from the beginning of that sand bar, you may have water, a foot and a half of water.

38 Q. That is 150, or 100 or 150 feet from the trees on the north end of the Island No. 3, you would find a bar with a foot to a foot and half of water on it?

A. Yes, sir.

39 Q. Do you know where the ferry landed?

A. Yes.

40 Q. Where was that?

91 A. I should call it—I never recollect much—I suppose on Fulton street next to that white storehouse.

41 Q. Where Fulton street is now?

A. Yes, sir.

42 Q. Fulton street crosses the river running east and west?

A. Yes, sir.

43 Q. And where Fulton street is was the ferry?

A. Yes, sir.

44 Q. Do you recollect a little stream running in there with a bridge over it?

A. A little stream, bridge over you say?

45 Q. Where Fulton street is now was there a little creek running into the river?

A. Oh! yes.

46 Q. That creek had a bridge over it?

A. Oh, yes.

47 Q. How was this ferry as to the mouth of that creek; on which side of it?

A. The ferry was on the north side.

48 Q. Of the creek?

A. Yes, sir.

49 Q. How wide was the ferry landing, about how wide?

A. Teams used to go across, twenty to twenty-five feet wide, the water.

50 Q. In going across, did they go straight across, or go a little down the river?

A. Well, pretty near straight across, except a little down.

51 Q. A little down?

A. Yes; not much down.

52 Q. How far was it from the south side of that ferry, or from the south side of the little creek there to this low land which you spoke of, or sand bar?

A. Oh, from the ferry to that; oh, I don't know; that is quite a distance; I never measured it, of course. I have thought to myself probably from two hundred to three hundred feet; I never measured it, but it is quite a distance.

53 Q. Do you know as to the amount of water in the river compared with what it has been before, or was at that time in 1836; how does it compare, taking it the year through, whether there is more or less water in the river now than there was then?

A. I think it is less now.

92 54 Q. Less now?

A. I think so.

55 Q. In that Island No. 3, as you have described it, was there a foot of solid ground in 1837 between that and Island No. 2.

Mr. CAMPBELL: I certainly object to that as leading and improper.

A. No, not as I call it.
56 Q. How long did you live on Waterloo street?
A. I left Waterloo street in 1857.
57 Q. You lived there from the time——
A. (Interrupting.) From the time I arrived here.
58 Q. From 1836 to 1857?
A. Yes, sir.
59 Q. How near to Fulton street did you live on Waterloo street?
A. Well, let me see, about a hundred feet, probably.
60 Q. Then you were familiar with the state of the river—its condition?
A. Oh, yes; I never took much notice; I have known it. Still I see the water rose—the water in the river.
61. Q. You say there was no land south of Fulton street, as I understand, and between the head of Island No. 3; whether or not since that time land has formed there now between Fulton street and the head of Island No. 3—whether or not since that time and between the present time land does not appear—whether there is not land there now?
A. I don't understand you exactly.
62 Q. Between the time, 1837, when you first saw the river?
A. 1836.
63 Q. (Continuing) And the present time, whether or not there has been deposited land between Fulton street and the head of Island No. 3—whether land has appeared there?
A. The last time I was there I see land—I don't know nothing about it—it was all land.
64 Q. Were you ever on Island No. 3 during this time, dur-
93 ing those years, frequently?
A. Oh, yes, there every week.
65 Q. What for?
A. Hunting pigeons.
66 Q. How far did the creek come out below the warehouse?
A. Below the warehouse?
67 Q. Yes?
A. Oh! about six rods, probably.
68 Q. The little creek came how far below the warehouse?
A. Six rods.

Cross-examination by Mr. CAMPBELL:

69 Q. How long since you have been here to this place, to these premises south of Fulton street on the east bank of Grand river?
A. When?
70 Q. How long since you have been there now?

A. I guess in July sometime: I don't recollect—on the fourth of July.

71 Q. Last July?

A. Yes, sir.

72 Q. Have you talked over this matter with anybody, Mr. Butler or in their presence?

A. I never saw much of Mr. Butler. Mr. Butler, his boys came after me and we went there to see how the island was.

73 Q. When was that?

A. That is in July.

74 Q. Last July?

A. Yes, sir.

75 Q. How long was it before July that you had been down there on those premises?

A. I don't recollect?

76 Q. Many years?

A. A great many years.

77 Q. How long before last July was it that your attention had been called to the condition of things there in 1836? How long before that, that you thought of it, had you thought of it?

A. I don't know what you mean?

78 Q. Before last July how long had it been since you thought of the condition of things in 1836?

A. That is what I say, I did not know nothing about when I was there except it was for these trees, I recollect.

79 Q. You never recollected anything about the island at all?

94 80 A. No, except for the tree.

81 Q. They have been standing there?

A. I can recollect the trees all round.

82 Q. Do you swear those are the same two trees that stood there fifty years ago and more?

A. Yes, I guess they are the same trees.

83 Q. Are you sure of that, do you swear to it?

A. Well, yes.

84 Q. Did you mark them in any way?

A. I did not mark them, but we played on those trees in early days.

85 Q. Are they the only trees that were there on any of the islands?

A. That is what I think was the same tree.

86 Q. You mean there were trees there in 1836 on these islands, is that what you mean?

Mr. BUTTERFIELD: That is objected to, the witness has testified what he means.

A. There was not any large trees on the north of that island, all the trees was pretty much on the east side.

87 Q. Where did those trees stand, I mean on the north side of what you call Island No. 3?

A. On the north side.

88 Q. You say they were not there in 1836?

A. I saw them there.

89 Q. I thought you said they were not; they were trees round on the east side.

Mr. BUTTERFIELD: That is objected to; he did not say that.

A. What I said, on the east side the road was full of trees and on the north side was only a very few big trees.

90 Q. I wish you would describe the east bank of the river from what is now Bridge street, down to Hall street, as you found it in 1836, when you came here?

A. From Hall street?

91 Q. From Hall street on the south to Bridge street on the north?

A. I have not been over the bank of that river probably twenty-five years, I don't recollect when; I never was around that river.

92 Q. Don't you remember anything about it as it was in 1836?

A. Yes, I used to know it.

93 Q. You went along the river, in 1836, up to Lyons and down to Grand Haven?

A. Yes, sir.

94 Q. Have you any recollection of the east bank of the river in those years or not?

A. I recollect

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A. On the bank of the river?

96 107 Q. There was another built on the bank of the river?

A. There was an old yellow house.

108 Q. Where was that?

A. Next to the red store, north.

109 Q. How far north of the red store?

A. That was over, probably, thirty to forty feet; I never measured it.

110 Q. You are giving your best judgment from your recollection of where they stood?

A. Yes, sir.

111 Q. Were there any other buildings in that year along that bank?

A. No, sir.

112 Q. Any north or south?

A. There were three stores on the foot of Monroe street.

113 Q. Did that extend on the river? Do you mean a building having two or three stores in it, or were they different buildings?

A. There was Mr. Park, A. W. Roberts & Son, C. W. Taylor, and old Judge Morrison; there was four stores there then.

114 Q. Where did their store extend?

A. Well, when he fixed at the head of Monroe street he took the old store away, that was this side, this store was right opposite to the bank there.

115 Q. About where the bank is?

A. Yes, sir.

116 Q. You mean Sweet's hotel; where Sweet's hotel is now?

117 Q. No, no. The other bank; where Mr. Tinker's bank is.

118 Q. The Exchange City?

A. Yes, sir; I did not remember the name of the bank.

119 Q. About on the line of Pearl street, then?

A. Yes, sir.

120 Q. Those stores [illegible]

A. Yes, sir. Yes, it was on Pearl; C. W. Taylor was on Pearl, and this was south.

121 Q. The other came along south?

A. Yes, sir.

122 Q. Were all on the river?

A. On the river; on that channel there, not on the strand of [illegible]

123 Q. You say they were on the channel?

A. No, no, no; I don't think the witness did say that.

124 Q. You have been here since 1830?

A. Yes, sir.

125 Q. Were there any buildings north of those stores?

A. Yes, sir; I mean along the river?

A. Yes, sir, I mean [illegible] on the river south of Richard [illegible] in 1830?

[illegible]

[illegible]

[illegible]

A. No. 2 and No. 3, that is, [illegible] there, two small [illegible] was a little [illegible] and [illegible] over the same [illegible] through.

[illegible] Q. In going into the steamboat docks in coming up from the south, you had to go into that channel east of those islands?

A. Yes, sir.

174 Q. Coming from the south, where did you enter that channel?

A. Coming from the south, how?

175 Q. In a boat, where would you go into the channel to go up to the dock?

A. We used to take that channel on the south part of Island No. 3.

176 Q. You used to come in and go over the south line of No. 3 to go to the channel.

A. There in Grand river the water was too low; the channel was a good deal more water.

177 Q. There was more water in the channel east of the islands than in the Grand river?

A. Yes, sir; the Grand river crooked a little on account of that island there, and we used to take that channel there; that is all the channel was there.

102 178 Q. At the south line of Island No. 3?

A. Yes, sir.

179 Q. In leaving the docks where would you go?

A. Go back the same way.

180 Q. Did you ever go in there between Islands No. 2 and 3?

A. Only when I crossed the ferry. I see a steamboat go through with very high water.

181 Q. Did you ever try to go through there yourself with a pole-boat or any boat that you were running?

A. No, the current was too swift.

182 Q. Did you ever go from the steamboat landing, from the north and go out into the river north of Island No. 1—did you ever go out that way?

A. I don't understand you exactly there.

183 Q. Did you ever leave the steamboat landing—you know where they were?

A. Now?

184 Q. Then; I am talking all the time of 1836?

A. Yes, sir.

185 Q. Nothing else?

A. Yes, sir.

186 Q. And 1837 and those early years?

A. Yes, sir.

187 Q. That is what you have been speaking of?

A. Yes, sir. 1836–7 and 8.

188 Q. The years you worked there on the pole-boat?

A. Yes, sir.

189 Q. After that you started a sloop and have never been on the river since?

A. Except to go to Grand Haven.

190 Q. You have gone back and forth but never have worked on the river?

A. No.

191 Q. In either of these years did you ever take your boat and go from the steamboat landing to go north and go out into the river north of Island No. 1?

A. Not with my pole-boat, I see a steamboat, in 1837 Mr. Godfroy built his steamboat.

192 Q. In 1837 Mr. Godfroy put on a boat?

103 A. He built the boat and I see the steamer go through the way you explain there. With the pole-boat I never went.

193 Q. Was there any steamboat on there before Mr. Godfroy built this one in 1837?

A. I guess not.

194 Q. Was the ferry there in 1836 when you came?

A. Yes, sir.

195 Q. Who was running the ferry at the time, who owned it?

A. Well a man by the name of—I don't recollect the name—Sibley, I don't know—I don't recollect the name, but in 1837 a man by the name of Charlie Truant.

196 Q. How long was the ferry kept there, do you know when it was given up?

A. No, I am sure I cannot tell. Oh! it was for a great many years; then I cannot tell; I never took much notice. I suppose they stopped when they built the bridge.

197 Q. Can you tell or give us any idea of the distance between the south line of Island No. 2 and what is now the north line of Fulton street?

A. The north line of Fulton street and the south line of Island 2?

198 Q. Yes, as it stood in 1836 and 1837?

A. I cannot tell you, I never measured that; I presume 150 or 200 feet, probably.

199 Q. How far was it from the north line of Island No. 3 to the present south line of Fulton street?

A. It was a great deal longer than that.

200 Q. How far?

A. I presume that was 200 or 300 feet, probably.

201 Q. This creek you have referred to, what was the name of that, what was it known as?

A. No name at all, only a little creek.

202 Q. It is a little stream running there, into the channel there?

A. Yes, sir.

203 Q. How far did it run in south of the south line——

A. (Interrupting.) In very low water the water did not run.

104 204 Q. In dry times?

A. In very dry times I see it pretty near dry.

205 Q. How far was the mouth of that stream from the south

line of Island No. 2, or where did it run in with reference — the present line of Fulton street?

A. You mean the creek on the north side of the island go into the Grand river?

205 Q. What was it north of Island No. 2?

A. The creek.

206 Q. The little stream we have been speaking about, where did that run into the river with reference to the present line of Fulton street?

A. It used to go into the river about—only a few rods from Fulton street.

207 Q. A few rods from where Fulton street is now?

A. Yes, sir.

208 Q. Which way?

A. South.

209 Q. Where was the ferry landing located with reference to this creek?

A. North.

210 Q. How far north?

A. I think myself it was part of the ferry was on Fulton street.

211 Q. Was about where Fulton street is now?

A. Yes, sir.

212 Q. What was the ferry landing? What did they have by way of a dock or wharf there, for ferry, anything?

A. Eh?

213 Q. What did they have there for a landing of the ferry?

A. They had a boat.

214 Q. The boat was used, the boat was the ferry; did they have a dock there or wharf?

A. No, no, no, they did not have no wharf; used to have a scow. I don't know, I said that plain—a scow to ferry a team across and things that way. The dock was right opposite, I mean on this side.

215 Q. That was the Godfroy dock?

A. Yes, sir.

216 Q. Where did the people land from the ferry when brought over? Where did they get into the boat, right from the ground?

A. Yes, sir.

217 Q. Stepped in and out from the ground, did they?

A. Yes, sir.

218 Q. Have you kept track of the buildings that went up there afterwards; did Mr. Godfroy build the steamboat dock there, or did he use the old dock?

A. Eh?

219 Q. Did Mr. Godfroy build a new dock for his steamboat or use the old one?

A. I don't recollect; I saw him repair that dock once; I don't know what time; I never took much notice of that.

220 Q. What boats were there in use before Mr. Godfroy built the steamboat?

A. There were two pole-boats, Mr. Godfroy having one and Louis Campau having one.

221 Q. Now, I wish you would go on and describe the condition in the river between the south line—I think you have stated Island No. 2 was the furthest south?

Mr. BUTTERFIELD: Of what?

Mr. CAMPBELL: South of Island No. 1?

A. Well, no.

222 Q. Which of these islands were further to the south, 1 or 2?

A. Of course No. 1 is there, and then the other south, No. 2.

223 Q. Which run furthest south, Island No. 1 or Island No. 2?

A. Island No. 2, of course.

224 Q. Describe now the condition in the river between Island No. 2 and the north line of Island No. 3; what was there?

A. Well, I don't know I can describe it any more than I tell you once or twice.

225 Q. What have you told us about it?

A. That channel there was 75 to 80 feet wide.

226 Q. That is between these islands?

Mr. BUTTERFIELD: Wait a minute.

The WITNESS (continuing): The Grand river was the other side; we did not use—I did not take much notice how wide it is.

1906 227 Q. Did not use the river west of these islands, is that the answer? I am asking you now from the south line of Island No. 2 onto the south line of Island No. 3, what was the condition there?

A. I cannot tell any more than what——

228 Q. (Interrupting.) You don't know what it was, is that the answer? You mean you have no recollection now of it?

A. I recollect the Grand river was, generally was, then, that was the same when I first came here to live or fifteen years after.

229 Q. There was always a channel in there east of these islands?

A. Yes, sir.

230 Q. Until years later?

A. When it began to fill up it stopped the water.

231 Q. I am talking about the space between Island No. 2 and down to Island No. 3. What was there in there?

A. Well, that was nothing in there except water, except a little this side of No. 3, what we called a sand bar.

232 Q. That was south of 3?

A. I mean on the south side of No. 3.

233 Q. Yes.

A. There was a willow and little willow.

234 Q. What else, what was the answer?

A. On that little sand bar was a little kind of brush, little willow, we used to call them willow.

235 Q. How long was that sand bar as you call it, north and south, how far did it extend?

A. Well, I was on that little sand bar once, or three or four times,

there used to be about, to my recollection, about a couple of rods at low water was dry enough; the balance of them was covered with water.

236 Q. About how far was it between this sand bar that you speak of and the north line of Island No. 5?

Mr. BUTTERFIELD: That is objected to.

237 Q. I mean Island No. 3. How far was it between what you call the sand bar and Island No. 3?

107 Mr. BUTTERFIELD: That is objected to as calculated to mislead the witness.

A. That was on the little creek, a little place; I have jumped that three or four times.

238 Q. That creek you speak of was part of the river that flowed in there?

A. It used to take the water from the east channel, then the water used to go in Grand river.

239 Q. You say this creek that came down the mainland flowed on and flowed in north of Island No. 3?

The COURT: He don't mean that. He means the little channel where the water ran through, between this sand bar and the north line of Island No. 3, he jumped across it.

Mr. CAMPBELL: I asked him if it was part of the river, and he said no.

240 Q. It was the waters of the river that run in there, was it not?

A. Eh?

241 Q. It was the waters of the river that run in there between this bar and Island No. 3?

A. The waters was water from the channel.

242 Q. From what channel?

A. On the east of the island.

243 Q. From the east channel of the river?

A. Yes, sir; the water used to run in Grand river, as I see it.

244 Q. You say you were on that bar two or three times?

A. Yes.

245 Q. In what year?

A. Probably more than that. Well——

246 Q. (Interrupting.) When did you first go on there?

A. I guess in 1858.

247 Q. What did you go on there for at that time?

A. I shot the pigeons on that side, so I jumped the creek and have my pigeons, I did not want to lose it.

248 Q. We don't expect to sue you for trespass for that, that is outlawed.

108 A. That is the time, and I have been there a great many times; I don't recollect the years, nothing at all; after I was married I used to go hunting for pigeons a great deal.

249 Q. You have not paid much attention to this since you left there?

250 A. No, sir.

251 Q. Since you left the boat, no more than any other citizen would notice, being in the same vicinity?

A. I used to have a cow, used to go past, around past the creek two or three times a day, two or three times a week, sometimes; I used to look at the river, and it seemed to be about the same thing all the way. I never see any change.

252 Q. Do you know when the channel of the river between Island No. 1 and 2 and the mainland was filled up; that it was finally closed?

A. No.

253 Q. You recollect the fact?

A. I recollect the fact.

254 Q. You don't know the time?

A. No.

255 Q. Did you say on your direct examination that this piece of land, north of Island No. 3, kept getting larger and filling up from year to year.

Mr. BUTTERFIELD: That is objected to. He did not say north of Island No. 3—north of the trees.

Mr. CAMPBELL: He did not say anything of the kind.

(Witness' testimony read.)

A. I don't know as I said that exactly; I did not see that fill up myself.

256 Q. You were down there last July?

A. Oh! well, that was filled up by somebody, too.

257 Q. It was all filled up then, was it not?

A. Yes.

258 Q. You don't undertake to make any statement as to when it was done?

A. No, sir.

259 Q. Did you ever do any work on that Island No. 3 after this season of 1836 when you planted corn there for Campau or Godfroy?

A. No. Godfroy—no, I never done no more work.

109 260 Q. You say you went on that island and shot pigeons?

A. Yes, sir.

261 Q. How did you get over there; in a boat?

A. Sometimes I got in a boat and sometimes I crossed on foot.

262 Q. Was the river dry enough at times?

A. We used to have water to our knee.

263 Q. That was in times of low water of course?

A. Yes, sir; then, generally, we use to have a boat, a little skiff.

264 Q. Was the river ever high enough there to overflow the lands around?

A. Oh! yes.

265 Q. How?

A. Yes.

266 Q. How high would it come?

A. I never measured it but it would come very high on Waterloo street, sometimes three or four feet.

267 Q. When was that?

A. I don't recollect exactly?

268 Q. What year did you first see that?

A. I don't recollect what year.

269 Q. In 1836 or 1837 or 1838?

A. Oh! no; I was married; that must have come 1840 or 1841, something like that.

270 Q. When it was up on Waterloo street then the islands were all overflowed, were they not?

A. I suppose so.

271 Q. How?

A. Yes.

272 Q. It must have been. Waterloo street was Water street then?

A. Island No. 3 is pretty high anyway.

272 Q. The highest part of it, the top?

A. The top, that, I presume, was covered too. I did not see it.

274 Q. Where was the highest part of Island No. 3? That was a very long island, was it not?

A. Oh! no, I suppose about 4 acres.

275 Q. How far did it run south? You commenced where the steamboat landing is to-day?

A. I see it.

110 276 Q. There is a part of the river runs in there and a peninsula down there?

A. Yes, sir.

277 Q. Is that part of the old Island No. 3? The steamboat landing——

A. (Interrupting). I did not take notice; I never have been there; I have passed there; I see where the steamboat——

278 Q. (Interrupting). I mean the present steamboat landing?

A. Yes, sir.

279 Q. Way down below Fulton street?

A. I never came near to it; I never took much notice where it is. I suppose it is opposite the Island No. 3, I think.

280 Q. What used to be part of Island No. 3?

A. Yes, sir.

281 Q. You said four acres?

A. That used to plant four acres of corn.

282 Q. This Island No. 3 was higher than the other Islands Nos. 1 and 2?

A. I don't know; I think it was a good deal; I think it is.

283 Q. You think these high waters that you have spoken of were high enough to cover the entire of Island No. 3?

A. I never took much notice but where people told me, where they showed me high-water mark.

284 Q. Did you not see it yourself?

A. No, sir, I cannot tell only what people told me, it covered up

all those island-, where they showed me the mark, that is all I know.

285 Q. When did they show you the mark?

A. I don't recollect.

286 Q. When you first came here?

A. I was talking here after I guess.

Redirect examination by Mr. BUTTERFIELD:

287 Q. How much water did your pole-boat draw when she was loaded.

A. That is hard to tell; I guess two or three feet; about two feet generally, probably more.

111 288 Q. For how many years did you hunt pigeons on that island after 1836?

A. Oh! well, I cannot tell; I have been on there a great many years.

289 Q. You cannot fix the time, but it was a great many years?

A. Yes, sir.

290 Q. That was quite a favorite resort for pigeon hunting?

A. Yes, sir, I saw a great many there; there was a lot of trees, soft maple, where the pigeons was, good trees to shoot; that is what we go there for very often.

291 Q. When you were there last July you found that there had been a good deal of filling, did you not?

A. Yes, sir.

292 Q. And you recognized this old tree that stood there?

A. Yes, sir.

Recross-examination by Mr. CAMPBELL:

293 Q. Did you recognize it as the one that stood there in 1836, as the very same tree?

A. I suppose it was a tree like this, a very big tree; he was big at that time; of course he grow some since that.

294 Q. We went all over this before on direct examination?

A. I see that tree twenty years after I was in here.

295 Q. Describe the tree, what kind of a tree was it?

A. I cannot tell you the name of the tree; I don't know hardly no name of any tree.

296 Q. What was the colors of it, what kind of bark did it have and what kind of leaves?

A. I don't know exactly I could answer that entire.

297 Q. What was it about the tree that made you recognize it, if you did recognize it as one that stood there in 1836?

A. Because we used to talk—all what I know, a man was working with me on that island, he used to tell me that tree was not the same kind, because all around were soft maple, that was a different kind of tree.

298 Q. This was not a maple; was it an elm tree or a sycamore?

A. I don't believe it was a sycamore.

112 299 Q. A sycamore has white bark?
A. Yes, sir.
300 Q. This has not.
A. Some places.
301 Q. There were some trees there in 1836 and you find this tree there now. Do you swear this tree was growing in 1836?
A. I cannot swear; I see a tree about the same place where I see that tree; that is what I think it is the same tree; that is what I can tell.
302 Q. You have not any mark on the tree?
A. No, sir.
303 Q. There is no mark by which you recognize it?
A. No, sir.
304 Q. When did you first go on Island No. 3 shooting pigeons? Did you shoot any there in the spring of 1836?
A. No, sir.
305 Q. Any time in 1836?
A. No, sir.
306 Q. Any time in 1836?
A. No, sir.
307 Q. 1837?
A. No, sir.
308 Q. Tell us when you did first, if you remember; when were you married?
A. 1839.
309 Q. Did you go there shooting pigeons before you were married?
A. I might; I guess I went once or twice but I don't recollect.
310 Q. You went after?
A. Yes, sir; oh! yes, after I was married I was there very often.
311 Q. You spoke of shooting pigeons; of having that fall over on what you call the sand bar?
A. That must be in 1840, 1841, 1842, probably, I don't recollect what year.
312 Q. Was this sand bar any different then than it had been in 1836 when you went there?
A. Well, no, I guess that was, looked to me about the same thing, still it might be changed, I never took much notice of it.
313 Q. You saw it when you first went in 1836?
A. Yes, sir.
314 Q. It was apparently the same in 1840 and 1841; is that the answer?
A. Yes, sir.
113 315 Q. You saw it when you went there in 1836?
A. Yes, sir.
316 Q. And it was about the same; as far as you can now tell, in 1840 and 1841?
A. I did not see any change.
317 Q. None that you can now speak of?
A. No, sir.

Redirect examination by Mr. BUTTERFIELD:

318 Q. I understood you were able to identify that tree now standing there because your attention was called to it by a man working with you in 1836, and that being a different kind of tree than most of the trees on the island, is that it?

A. Yes, sir.

Recross-examination by Mr. CAMPBELL:

319 Q. You say that in 1836 when you were at work there hoeing corn——

Mr. BUTTERFIELD: He did not say that.

320 Q. (Continuing.) A man called your attention to the tree there on the north end of the island?

A. You can see a tree; they was big trees was on that island.

321 Q. A man spoke of it, stating that was a different tree.

A. He told me the name of the wood because—that man name of Simond—he was a man that used to know all kinds of wood.

322 Q. He told you what kind of a tree it was?

A. Yes, sir, but I don't recollect the name.

323 Q. Did he say whitewood or cottonwood?

A. No, sir.

324 Q. Do you remember what he told you?

A. No, sir, I don't recollect.

325 Q. Do you swear that the tree that you saw there last July was the same one he spoke to you about in 1836?

A. It was in the same place.

326. Right in the same place?

A. That is my idea, the same place, because I have been to that island often enough.

114 327 Q. Is it about the same kind of a tree?

A. I found out the last time I was there he was bigger a good deal.

328 Q. But the shape of it, the bark?

A. The shape was all pretty near the same shape.

329 Q. In short, do you want to be understood as swearing that is the same tree you saw there in July that you were talking of in 1836. Do you swear to that positively?

A. The tree cannot be changed; he cannot be grown different since that.

330 Q. I am asking if you swear positively that that is the tree?

A. Some trees grow sometimes so very fast; I think myself that it is the same tree and the same place.

331 Q. But you don't swear to it positively, is that it?

A. We have to go to the best of our knowledge.

THOMAS BERRY, sworn on behalf of the complainant, testified as follows:

Examined by Mr. BUTTERFIELD:

1 Q. Where do you reside, in the city of Grand Rapids, Mr. Berry?
A. Yes, sir.
2 Q. How long have you lived here?
A. Oh! about 45 years.
3 Q. What is your business?
A. Nothing, I have got no business.
4 Q. What has been your business during that 45 years?
A. What I have done? I was a mason.
5 Q. What is your age?
A. My age? I am 78.
6 Q. The last years you have not worked much?
A. No, not this ten years.
7 Q. When did you first come to Grand Rapids?
A. 1845.
8 Q. Do you remember the time of the year it was?
A. I do.
9 Q. Where did you——
A. (Interrupting.) It was in May.
115 10 Q. Where did you live when you first came here?
A. On Monroe street.
11 Q. On Monroe street, where, can you describe it now?
A. Yes, sir, where police headquarters was on Monroe street.
12 Q. Opposite the Morton house?
A. Opposite the Morton house, fernint the Morton.
13 Q. Do you remember the old red warehouse on the river bank?
A. Yes; I should think I did.
14 Q. Known as the Godfroy warehouse?
A. Yes.
15 Q. How far south of that, if any, was there a creek, about how far?
A. A creek running into the river?
16 Q. Yes?
A. About ten or fifteen rods.
17 Q. Where did the ferry start with reference to the creek?
A. On the north side of the creek.
18 Q. About how far north, north of the creek?
A. Well, I take it to be most four rods.
19 Q. How frequently did you cross that ferry after you came here? How long did you keep up the habit of crossing, if you did?
A. I went at least once a week.
20 Q. For what purpose did you cross?
A. To go to church.
21 Q. The church was on the west side of the river?
A. Yes, sir.
22 Q. You crossed this ferry at least one a week to go there?
A. Yes, sir.

23 Q. In crossing that ferry did they go directly across as they swung out or go down the river a little on the east side and then come across?

A. They went pretty nigh straight across, went down the stream a little but not much.

24 Q. Do you know where the head of Island No. 3 was at that time?

A. Yes, sir.

116 25 Q. What was there on the head of Island No. 3, whether one or two large trees?

A. There was some trees there.

26 Q. How far were they below the ferry landing or below where the ferry crossed, about how many feet?

A. Oh! I could not tell exactly; maybe fifteen rods.

27 Q. Are those trees standing now?

A. I don't know.

28 Q. How long is it since you have seen the premises?

A. I did not see it except to see it from it here, maybe not in five years or six years.

29 Q. What was there between those trees and the place where the ferry crossed?

A. There was a sand bar there and some willows growing up on it in some places, and old timber floated in on it.

30 Q. How far was it below where the ferry crossed that the sand bar commenced?

A. I don't understand you.

31 Q. How far was it below where the ferry crossed that the sand bar commenced, the sand bar you spoke of?

A. Oh! not over five or six rods, if it was that.

32 Q. What portions of this sand bar was covered by water and what portions of it were out of water?

A. There was none of it out of water sometimes.

33 Q. Take it in an ordinary stage of water how much of it would show out of water?

A. I could not tell.

34 Q. Would it show any out of water in an ordinary time?

A. No; I should think not.

35 Q. Was there any island between Island No. 3 and the ferry?

A. No, sir.

Mr. CAMPBELL: I object to that as leading.

36 Q. As compared with the present position of the streets of Grand Rapids, I will ask you where the head of Island No. 3 was when you first came here. Where was it with reference to the present streets of Grand Rapids, if you can tell?

A. I could not exactly say. It was between Oak and Island.

117 37 Q. What was the width of this channel on the east side?

A. Oh! I should think it was about—a rough guess—I could not exactly say, that it was about seventy-five feet—sixty-five feet; the common width of a street—about that width.

38 Q. What was the width of the main river?
A. I could not tell you.
39 Q. About how far?
A. I cannot tell you because I don't know nothing about it.
40 Q. How many times wider was it than this channel on the east side?
A. Oh! I should judge it was four times as wide, maybe more, a good deal, for all I know; I am only guessing at that.
41 Q. Whether there were any large trees north of Island No. 3, and if so, where were they and how many?
A. I did not see any.
42 Q. What kind of ferry was this, pole-ferry?
A. Yes, sir, pole.
43 Q. That is the way they pushed it along, with a pole at the side?
A. Yes, sir.
44 Q. Did you go across the river in a small boat?
A. Oh! yes.
45 Q. Below where the ferry is?
A. Yes, sir, a good many times.
46 Q. Where did you land?
A. I landed between Oak and Island streets.
47 Q. Came over ahead of Island No. 3?
A. Yes, sir.
48 Q. For how many years did this practice of yours of crossing the river on the ferry once a week continue?
A. I should think about, not over a year, but I went a good many times over there after.
49 Q. Afterwards you went a good many times over?
A. Yes, sir.
50 Q. How frequently did you go over after that?
A. I could not tell you; I worked across the river there and came over in a boat sometimes, and went over.

118 Mr. BUTTERFIELD: That is all.

Court adjourned until tomorrow morning.

THURSDAY MORNING, *April* 24, 1890.

THOMAS BERRY resumed the stand.

Cross-examined by Mr. CAMPBELL:

51 Q. You came here in the spring of 1845?
A. Yes, sir.
52 Q. And have lived here ever since?
A. Yes, sir.
53 Q. Where has your home been, east or west of the river?
A. Well, it was on Monroe street first.
54 Q. Have you lived since east of the river?
A. Yes, sir.
55 Q. All of the time?

A. All of the time.

56 Q. How many islands were there in the river in 1845, when you came here, between the present line of Bridge street and Hall street on the south?

A. There was four.

57 Q. Did you ever make a particular examination of the river respecting the islands?

A. No, sir; I did not.

58 Q. Will you describe them; for instance, take the island furthest north, where did that lie?

A. About opposite the Sweet's hotel and Pearl street.

59 Q. How long was that island?

A. I could not tell you.

60 Q. Have you any idea, can you tell about how far down it went, how far it extended?

A. I think it run to Pearl street, somewheres there; I don't know exactly, don't want to say.

61 Q. Where was the next island, the next one to the south?

A. Down the river further?

62 Q. And then the next?

A. It was down towards Oak street.

63 Q. Did you ever go onto any of those islands?

A. I did.

64 Q. Which one?

A. No. 3.

119 65 Q. Where was No. 3?

A. It was this side of Oak street and part of it opposite Oak street.

66 Q. Extended from there on south?

A. Yes, sir.

67 Q. That was a long island?

A. Pretty long.

68 Q. Part of it is shown in the river today, the lower part, is it not?

A. Island No. 3 shows in the river today.

69 Q. The upper part of it, the channel at the upper part has been filled in, connected with the mainland?

A. Yes, sir.

70 Q. Do you know where the steamboat landing now is down there?

A. I do.

71 Q. Down from Waterloo street?

A. Yes, sir.

72 Q. Way below Cherry, isn't it?

A. Yes, sir.

72½ Q. South, in fact, of Cherry street—that is, it goes down there in the form of a peninsula, the upper part of the channel being filled in?

A. Yes, I suppose it does.

73 Q. How far north did that island extend when you first saw it in 1845?

A. It extended down to between Oak and Island streets.

74 Q. When did you first go onto the island?

A. Not for years after I came here I did not go onto it.

75 Q. Did you ever go over the surface of the island, the entire surface of it, from north to south?

A. I did.

76 Q. In what year was that, can you fix the time?

A. I cannot.

77 Q. It was some years after you came here?

A. Yes, sir.

78 Q. From the time you have been here there have been times, I suppose, in every season, of high water and low water in Grand river?

A. Yes, sir.

79 Q. Were there times in the early years when the banks of the river up as far as Waterloo street, or Water street then, would be overflowed?

A. Yes; I have seen them overflowed there once.

80 Q. In what year was that?

A. I could not tell you.

120 81 Q. A number of years ago?

A. Yes, sir; a number of years ago.

82 Q. Of course when the water was up there the islands would all be overflowed, would they—how was that?

A. I guess they were all overflowed that year.

83 Q. That is, Water street is higher than the most elevated part of any of those islands?

A. It is now, I think.

84 Q. Was it not then?

A. I don't hardly believe it was; I guess it was not graded until a few years ago.

85 Q. You crossed there and recrossed a good many times. Can you tell anything as to the comparative depth of the river in the east channel there and west channel there, I mean the part of the river west of the islands—which was the deeper part of the river?

A. I think the deepest part was on the east side.

86 Q. That was a narrower channel than the other?

A. Yes, sir.

Redirect examination by Mr. BUTTERFIELD:

87 Q. You have stated there were four islands, were then; what are the names of them?

A. No. 1 and 2 and 3 and No. 4.

88 Q. Where is No. 4?

A. It is down the river further; they used to call it the Robach's island.

89 Q. That is below the south end of Three?

A. Yes, sir.

JAMES A. RUMSEY, called and sworn on behalf of the complainant, testified as follows:

Examined by Mr. BUTTERFIELD:

1 Q. You reside in the city of Grand Rapids, do you not?
A. Yes.
2 Q. What is your age?
A. Seventy-five past.
3 Q. When did you first come to the city of Grand Rapids?
A. I arrived on the 6th day of June, 1837.
121 4 Q. How many people were there here at that time?
A. I could not tell you; not a great many, however, mostly laboring men.
5 Q. In what business did you then engage?
A. Wooding plows, setting up plows.
6 Q. Making the wood work to plows?
A. Yes, sir.
7 Q. Where were you employed, what street?
A. On Kent street, between Bronson, what used to be Bronson, and Bridge street.
8 Q. Were there either of those streets there then?
A. They were; those streets were there at that time, traveled by wagons.
9 Q. About how many people were there here?
A. Perhaps four or five hundred.
10 Q. Most of them new *new* settlers, or had they been here some time?
A. Mostly new settlers.
11 Q. Just come in?
A. Yes, sir.
12 Q. How long did you continue in that business?
A. One year.
13 Q. What did you do then?
A. Worked on a mill.
14 Q. What mill was that?
A. What used to be called Sweet's old mill. I helped to raise it and put the finish on it, and then I run it for a number of years.
15 Q. That is the mill where Berkey & Gay's factory now stands?
A. In that vicinity, just above Bridge-street bridge.
16 Q. Sweet's old mill?
A. Sweet's old mill.
The COURT: That was over on the river bank?
A. Yes, sir; over on the west side.
17 Q. You mean on the river bank where Berkey & Gay's factory stands?
A. Yes; where they lately built there.
18 Q. That is the new factory just put up?
A. Yes, sir.
122 19 Q. How long did you continue in that business there?
A. Some four or five years.

20 Q. Did you have any other mills in connection with that during that time?

A. No, sir; not at that time.

21 Q. When after that, after four or five years, what business did you engage in?

A. In the plaster business.

22 Q. Where at?

A. Plaster creek.

23 Q. Below?

A. Yes, sir.

24 Q. From that time until the present you have lived continually in Grand Rapids or its immediate neighborhood?

A. With the exception of one season I run a mill at Grandville.

25 Q. Do you remember where the warehouses were on what is now Waterloo street in the city of Grand Rapids, Richard Godfroy and Campau warehouses?

A. Yes, sir.

26 Q. Do you remember the little creek that run into the river at about that point?

A. Yes, sir.

27 Q. And the dock that was for those warehouses?

A. Yes, sir.

28 Q. Whether the ferry crossed the river at about that point?

A. Yes, sir.

29 Q. Where did that ferry land?

A. Just below the warehouses, I should think, about now in Fulton street.

30 Q. Where the bridge is now?

A. Yes, sir.

31 Q. Taking the south line of Fulton street as it is now, fixing your idea from what you have already mentioned, if you can determine it, and looking south, how far was it before you saw any large trees, or any trees whatever?

A. I don't know the distance, but it was, the first large trees was, a little this side of the present crossing after you get from the mainland over on to Island No. 3.

32 Q. That is a sort of causeway, built across ahead of the steamboat channel?

A. Yes, sir.

123 33 Q. At that time large trees were just south of that crossing?

A. A few trees this side of that crossing.

34 Q. This side, you mean north?

A. Yes, sir.

35 Q. Do you know where that would bring them with reference to the present streets of Grand Rapids as at present laid; are you able to recall where that would bring it, those trees?

A. It would bring it a little this side of Oak street, a little north of Oak street.

36 Q. Between the north of those big trees just described?

The Court: Those trees on the Island?

Mr. BUTTERFIELD: Yes.

37 Q. (Continuing:) Describe what there was in the river, what the appearance of the river was, and what there was in it?

A. There was a channel running down called, I think they called at that time, the steamboat channel.

38 Q. On the east side of 3?

A. On the east side of 3.

39 Q. Where did the main channel of the river run?

A. West of Island No. 3.

40 Q. What was the comparative width of the east and west channels?

A. I should think the west channel was some five or six times as wide as the east channel, and perhaps more.

41 Q. In an ordinary stage of water, what was the depth of the east channel?

A. I could not tell you, but depth enough so the steamboat run in it.

42 Q. How much draft did the steamers running here have?

A. I don't know that.

43 Q. In 1837, were you down to that ferry?

A. I was; yes, sir.

44 Q. What time of year was it?

A. Oh, I should think, about midsummer.

45 Q. Was it high or low water?

A. It was low water.

46 Q. Standing on that ferry and looking down towards Island No. 3, what did you see; that is, looking towards
124 Island No. 3, what was there between that and Island No. 3?

A. In the first place, below Fulton street there was water.

47 Q. How far did that water extend towards Island No. 3?

A. I should think fifteen rods; in the neighborhood of that, to guess at it.

48 Q. That is the ordinary river water, flowing in the surface of the river?

A. Yes, sir.

49 Q. Then what did you strike?

A. There was a long strip of willow bushes growing up there.

50 Q. How wide was it?

A. I could not say.

51 Q. Wide or narrow?

A. I think it was narrow, not very wide.

52 Q. What were the character of those willow bushes, rapidly-growing willows?

A. They grow pretty fast.

53 Q. Such as grow in water?

A. Such as grow in water or adjacent to it.

54 Q. Such as do not grow on solid or firm land?

A. Not unless there is water close by.

55 Q. How was this strip of willow bushes, if you are able to judge, north—how far did it extend north of those big trees?

A. It extended up in the neighborhood of fifteen rods below Ful-

ton street, almost down to Island No. 3, until you came towards the big trees; there the ground was a little higher.

56 Q. How wide was it, as near as you can judge, in your best judgment?

A. It may have been in places six or eight rods wide; in other places not more than a rod or two, and may not have been so wide as this; it is all guess.

57 Q. How does the amount of water now in the river compare with the amount in it at that time, as you recollect?

A. I think there is not near so much water in the river as there was them days.

58 Q. Whether or not by the decrease of the volume of water in the river land has been exposed on the sides in quantities, along up and down the river, to your knowledge?

125

A. I think it had increased, although in some places it has decreased, washed away.

59 Q. As the river sways from side to side, it eats out of one bank and increases another?

A. Yes, sir.

60 Q. Have you seen steamers pass over the water between Fulton street and this band of willows which you saw?

A. Yes, sir, frequently.

61 Q. How late have you seen that?

A. I could not say how late.

62 Q. Was it an ordinary stage of water when they passed over there?

A. No, sir; it was high water generally when they turned out and go through there in the main river.

63 Q. Did you know what the depth was there?

A. No, sir; I did not.

64. Q. Was it in very high water or in an ordinary rise of water?

A. It did not require a very big freshet to let steamers out through there?

65 Q. You are familiar with the present condition of this land, just south of Fulton street, are you not, for two or three hundred feet?

A. Yes, sir.

66 Q. It is exposed there enough for quite a distance, say five hundred feet back from Waterloo street?

A. I never measured it, but I should think in the neighborhood of that.

67 Q. Whether or not that land thus exposed has appeared since, entirely since you first saw it in 1837?

A. Yes, sir.

68 Q. Are you able to fix the time?

A. I am not.

69 Q. Or whether it has been gradual?

A. It has been gradual.

70 Q. Do you remember the time when the channel between Islands No. 1 and 2 and the east shore was shut up, about?

A. No, sir; I do not.

71 Q. You don't remember the date, but you know it was shut up?

A. Yes, sir.

72 Q. Can you remember about the time?

A. I could not tell you within a number of years.

73 Q. What effect, in your judgment, did that shutting off of the river from this channel have on the increase of this land?

A. It caused it to fill up, I think.

74 Q. As a matter of fact the bank of the river has been—the river has been very much narrowed in its way through the city of Grand Rapids above that, in the last twenty years?

A. Yes, sir.

75 Q. And the course made straighter?

A. Yes, sir.

76 Q. At these warehouses was there any dock built?

A. There was a dock.

77 Q. How far did that dock extend out from the original shore, as you remember?

A. I should judge nearly the length—the depth—of the warehouse dock; I think the water came in on the south side of these warehouses, almost to the front of the warehouses.

78 Q. Below the warehouses which way did the river tend, towards the east?

A. Yes, sir.

79 Q. Formed a sort of bend in the river below?

A. This channel it tends towards the east in going below the warehouses.

80 Q. About how far did this dock which was erected there extend out from Waterloo street as it is now: are you able to fix that?

A. Not now, the number of feet.

81 Q. Not now, the number of feet?

A. No, sir.

Cross-examination by Mr. CAMPBELL:

82 Q. Was there a steamboat running on Grand river when you came here in 1857?

A. Yes, sir.

83 Q. By whom was it owned?

A. I don't know who owned it; the name of the boat was the "Governor Mason."

84 Q. Where did that boat run to and from?

A. From Grand Haven to Grand Rapids.

85 Q. Grand Haven is down the river from Grand Rapids?

A. Yes, sir.

86 Q. On the shore of Lake Michigan, is it not?

A. Yes, sir.

87 Q. About at the mouth of the Grand river?

A. Yes, sir.

88 Q. At what point in Grand Rapids was the dock of this steamer in 1857?

A. She had two docks.

89 Q. Where were they?

A. One at Fulton street and one at the foot of Monroe street here.

90 Q. Both on the east bank of the river?

A. Yes, sir.

91 Q. Were they east or west of the islands?

A. East of the islands.

92 Q. Where would you fix the north line of the island down there, furthest north at that time?

Mr. BUTTERFIELD: The north island?

A. Island No. 1, is it?

93 Q. The one that is furthest north?

The COURT: That means Island No. 1.

94 Q. I am speaking of the river between Bridge street and Hall street, the present lines; there are several islands in the river, in that part of the river; take the one furthest north; where did that lie?

A. Not far from Pearl street.

95 Q. Did the north island extend north or south of Pearl street, the present lines of the street we are speaking of, of course?

A. I think it did not extend north of the north line of Pearl street.

96 Q. Then how many islands were there in the river?

A. Four, I believe.

97 Q. Where did the second island lay with reference to the one you have just described?

A. In the vicinity of the jail.

98 Q. Did it lie south or east of the one you have mentioned?

A. It lay south of Island No. 1.

99 Q. Then Island No. 3 lay below?

A. Yes, sir.

128 100 Q. There was a channel in there between those islands and the main bank of the river on the east side?

A. Yes, sir.

101 Q. Of about what width?

A. It varied in width, but probably it was a hundred feet in width in some places; in other places it was narrower.

102 Q. About how much narrower?

A. I think half narrower in some places; my recollection is.

103 Q. Where was the south line of the second island, or No. 2, with reference to the present lines of Fulton street?

A. Some little distance north of Fulton street.

104 Q. Of the present north line of Fulton street?

A. Yes, sir.

105 Q. Then Island No. 3 was some distance south of the present south line of Fulton?

A. Yes, sir.

106 Q. How far?

A. In the vicinity of Oak street, from Fulton street to Oak.

107 Q. This channel that run in there east of the islands was the one usually used in navigation by the steamer, was it not?

A. Yes, sir.

108 Q. Were there any other boats running there at that time?

A. I think there was, towed by those steamers, scows.

109 Q. They came to these docks on the east side of this channel?

A. Yes, sir.

110 Q. That is where they did their business, received their freight and passengers and discharged them?

A. Yes, sir.

111 Q. The usual course in coming in and out of these docks was to go through the east channel, was it not?

A. Yes, sir.

112 Q. Coming up the river and entering the channel at the south part of Island No. 3, and then go up the channel to the docks?

A. Yes.

113 Q. And go out the same way?

A. Yes, sir.

114 Q. In high water they would sometimes go out between the islands, out to the west?

A. Yes, sir, and past the upper island.

115 Q. Sometimes go north of Island No. 1?

A. Yes, sir.

116 Q. Usually the navigable part of the river was the east channel, that part of the river?

A. Yes, sir.

117 Q. Was it not the deeper part?

A. I don't know; I am inclined to think it was deeper than the main channel.

118 Q. Where were the rapids of the Grand river; there were certain long rapids in the river?

A. Right opposite to us, almost, then.

119 Q. Where was the south line of them with reference to the present line of Bridge street?

A. In the vicinity of the islands, in that vicinity; you got into still water not far; that is, moderately still, not far from Fulton street.

120 Q. You mean north of Fulton?

A. No, to the south of Fulton.

121 Q. Did the rapids run along west of the islands?

A. Yes, sir.

122 Q. So the still waters and deeper waters were below?

A. Yes.

123 Q. Has the river been navigated by steamboats between Grand Haven and here ever since?

A. As far as the head of the landing now.

124 Q. The steamboat landing is lower now than it was then?

A. Yes.

125 Q. Has been for some years?

A. Yes, sir.

126 Q. Do you know the point of land that lays east of the steamboat landing and extends south; there is a sort of peninsula?

A. I don't know what you have reference to.

127 Q. The land is in a body of water, in an arm of the river, extending up north?

A. Yes, sir.

130 128 Q. The land lying east of that body, is that part of the old Island No. 3; west of it, I mean?

A. Yes, sir.

129 Q. Did you ever do any work on the river, have anything to do with boats, or anything there, or with the warehouses, carry on business there?

A. No, sir; I worked for Henry R. Williams when he was interested in the boating business and had had his office in one of those storehouses.

130 Q. What year was that?

A. I could not state the year.

131 Q. One of those early years?

A. Yes, sir.

132 Q. Before you went into the mills?

A. No, sir; after.

133 Q. This strip that you spoke of with willows on it, was that there when you came here in 1837?

A. Yes, sir.

134 Q. Was any part of it out of water then?

A. Yes, sir.

135 Q. The part that you have described?

A. Yes, sir.

136 Q. That is a strip, a long strip extending down towards Island No. 3 and somewhere six or eight rods wide?

A. Yes, sir.

137 Q. At different points?

A. At different points.

138 Q. Were there any timber or anything on it?

A. On the lower end there were some large trees, a few large trees; there was a passage of water that came from the main channel of the river and came across into this east channel.

139 Q. Between Island No. 3 and this strip?

A. I supposed it was between those; I don't know where Island No. 3 comes to.

140 Q. As the land lay there then there was a point where the river passed in?

A. Yes, sir.

131 141 Q. This long island which we call No. 3 extending way down, north of this there was a little channel of the river?

A. A little channel.

142 Q. North of that was this strip?

A. Yes, sir.

143 Q. On that strip was a few trees?

A. A few trees north and south end.

144 Q. What kind of trees were they?
A. I could not tell what kind of wood.
145 Q. How large were they at that time?
A. Pretty good sized trees, some of them; I could not say; I should say maybe sixteen or eighteen inches through, maybe larger.
146 Q. How many were there of these?
A. I could not say.
147 Q. Several of them?
A. There were some, more than one.
148 Q. Then there was these willows?
A. Yes, sir.
149 Q. Were there any other places on the islands or along the river that willows were growing at that time?
A. Yes, sir; there were willows growing on the east side of this channel, the boat channel.
150 Q. Is it not a fact that there is not any kind of willow that grows on land that is all the time covered with water?
A. I think that they will grow where it is covered with water constantly.
151 Q. In what kind of soil, sandy soil?
A. In alluvial soil.
152 Q. If covered with water at all, is it not true in these boggy or marshy places?
A. I could not swear, I could not say as to that; I think they will grow by mere water and on quite dry ground, and they will grow in the water; I think they will; I don't know as they will grow where it is constantly covered with water.
153 Q. In a sandy river bottom constantly covered with water, do you expect to find them?
A. I should not expect to find them where it is always covered with water.
132 154 Q. Did you ever go onto any of those islands in the river; had occasion to?
A. Yes, sir; I have been on all of them except the lower one; I don't think I was ever on No. 4.
155 Q. That is Robach's island?
A. No, sir.
156 Q. Did you ever go on this small one, north of Island No. 3?
A. Yes, sir.
157 Q. When did you first go on there?
A. I could not give you the date.
158 Q. About how long after you came here?
A. I presume it was eight or ten years before I was on that strip at all.
159 Q. What did you go on there for at that time; was there any manufacturing or any work there of any kind?
A. No, sir.
160 Q. What occasion had you to go?
A. Just the fun of it; used to be tramping round the river at times considerably as a boy.

161 Q. How many warehouses were there down there at that time; these two, the Richard Godfroy——

A. (Interrupting:) Two storehouses.

162 Q. Both those men are dead, I suppose?

A. Yes, sir; I believe they are.

163 Q. Now this ferry that you have spoken of that started on the present line of Fulton street and went to the west side of the river; were there some buildings across there then?

A. Yes, sir.

164 Q. What were they?

A. The Catholic church and a sort of Indian village.

165 Q. In leaving this ferry, which side of this strip did it run, north or south, to get out into the west channel of the river?

A. North.

166 Q. Ran along the north of it?

A. Yes, sir.

Mr. BUTTERFIELD: He did not say that.

133 167 Q. It ran along there, north of this strip?

A. Yes, sir.

168 Q. There were seasons, I suppose, of high water and low water in the Grand river at an early day?

A. Yes, sir.

169 Q. And has been ever since; during what seasons would be the time of low water, what part of the year?

A. Midsummer, generally; the fall.

170 Q. When would be the highest water; in the spring?

A. In the spring generally.

171 Q. The melting of snow and the spring rains?

A. Yes, sir.

172 Q. Do you know where the high-water mark was along the east bank of the river; did you ever make any observation?

A. No, sir.

173 Q. Whether the waters were high enough there at different times to overflow to some extent the east bank of the river, Water street, as it then was, and these islands?

A. Yes, sir.

174 Q. What has been the change in the volume of water in the Grand river since those early years; has it been a widening of the channel of the river or a decrease of the volume of water flowing through it?

A. A decrease, I think, in the volume of water flowing through it.

175 Q. The water generally is shallower?

A. Yes, sir; not so much water running through Grand river as at an early day.

176 Q. You spoke of the premises south of Fulton street and extending back five hundred feet from Waterloo street, and you say that has all appeared since you came here in 1837?

A. Yes, sir; right adjacent to Fulton street, right below Fulton street.

177 Q. You don't mean to include so much of the islands and strip as were then visible, do you?

A. I don't know as I understand you.

134 178 Q. In 1837 when you came here this Island No. 3, the long island to the south and this strip were visible then, were they not?

A. Yes.

179 Q. There has been some additions to them?

A. Yes, sir; quite large additions.

180 Q. You don't mean there was a time when there was no island or strip visible at all?

A. No, sir.

181 Q. Since this channel above was filled up, I mean the channel between Islands No. 1 and 2, that was filled in there by some people, was it not, and the island addition platted?

A. Yes, sir.

182 Q. Pearl street extends out on that addition, and the buildings on the south side of it?

A. Yes, sir.

183 Q. You don't remember what years that was?

A. No, sir; I don't.

184 Q. Of course when that was filled up there there did not any water run through that channel below?

A. No, sir.

185 Q. After that filling there were no additions to those islands below by any refuse or matter going down through the channel, because the channel did not run through there?

A. No, sir.

Redirect examination by Mr. BUTTERFIELD:

186 Q. At the time in 1837 where was all the market of the village, that is, where was it, on the east side or west side of the river?

A. Principally on the east side of the river.

187 Q. In order to get goods to the east side of the river it was necessary boats should get up on this side in some way?

A. I should think so.

188 Q. Afterwards, as the city increased in size, where was the steamboat channel?

A. Where it is now.

189 Q. Did they ever run up to the west side?

A. Yes, sir, they run up to the west side and built a storehouse over there to leave goods there.

135 190 Q. How many years did they run up to the west side?

A. I could not tell you.

191 Q. Few or many?

A. Quite a number of years.

192 Q. This present steamboat channel, as an artificial channel, was deepened and widened of the old channel?

A. Yes, sir, the present one.

193 Q. It has been dug out and deepened so they can get up with a boat to this side of the river?

A. Yes, sir, dredged out.

194 Q. When you were on this Island No. 3 and towards the north end of it, you found a channel?

A. Yes, sir.

195 Q. What was the width of that channel?

A. I am not able to say, it may have been eight, ten or twelve feet, depending altogether on how high the river was.

196 Q. The depth would depend; were there any holes in it, the channel, deeper places?

A. No, not that I know of.

197 Q. When you went across and got to the trees, the big trees that were north of that, how much further north could you go, or did you go, beyond the big trees?

A. I did not go but a little ways.

198 Q. Why?

A. The bushes were too thick.

199 Q. Wasn't land enough. How does the present amount of land lying north of those trees compare with what you saw there at that time?

A. Well, there was but a small quantity of land at that time; now there is quite considerable of it.

200 Q. Several acres ain't there?

A. I should think so.

201 Q. Then you say it was a small strip extending north from those trees?

A. Yes, sir.

202 Q. With a lot of willow bushes on it?

A. Yes, sir.

203 Q. And extending up part way between that and the ferry?

A. Yes, sir.

136 204 Q. Did you wade that little stream you found there?

A. I did.

205 Q. How deep was it where you waded it at that time?

A. My recollection is it was somewhere in the neighborhood of three feet where I got across.

206 Q. What time of the year was that?

A. About midsummer.

Recross-examination by Mr. CAMPBELL:

207 Q. When was the steamboat landing established on the west side of the river?

A. I could not give you the date; it was some years after I came here.

208 Q. Where was it?

A. They built a warehouse over there and the boat would land on that side whatever there was to be delivered there.

209 Q. To that warehouse?

A. Yes, sir.

210 Q. The landing has always been on this side?

A. The main landing has.

211 Q. The present channel leading up to the present steamboat landing is artificial, has been dredged out?
A. Yes, sir.
212 Q. Where did the old channel lay with reference to this, east or west of it?
A. Right in the same place.
213 Q. They always used that channel in there east of Island No. 3 at that early day?
A. Yes, sir; always have used it.
214 Q. Where is this dredged part of it with reference to the old channel, east or west of it?
A. Right in the same place, or nearly so.
215 Q. Was it filled up so they had to dredge it out?
A. I am inclined to think it was, or else the water got down so low.
216 Q. At an early day they used the natural channel, when you first came here.
A. Yes, sir.

137 Redirect examination by Mr. BUTTERFIELD:

217 Q. As a matter of fact, they have across the head of this artificial channel, there is this road or barrier there to connect the mainland with Island No. 3?
A. Yes, sir.
218 Q. So that shuts off the main water entirely?
A. Yes, sir.
219 Q. It was necessary in order to continue this channel for steamboating to dredge it out considerably?
A. I think that is the object.
220 Q. It is not very deep now?
A. No, sir.

Recross-examination by Mr. CAMPBELL:

221 Q. They did not do any dredging until it had been filled in north of there?
A. No, sir; I guess no dredging was done until it was stopped above.
222 Q. This roadway from the main land to Island No. 3, on what line is that with respect to Oak street or Cherry?
A. I think it is within Oak street, the limits of Oak street.

THOMAS W. PORTER, being duly sworn on behalf of the complainant, testified as follows: (The oath was administered by the court.)

Examined by Mr. BUTTERFIELD:

1 Q. You reside in the city of Grand Rapids?
A. Yes, sir.
2 Q. How long have you lived here?
A. I came here in 1850, and permanently in 1853.

3 Q. How long were you here in 1850?

A. Oh, I was here some two months.

4 Q. What was your business when you first came here in 1853?

A. I came here to start a painting business.

5 Q. In that business did you have anything to do with the steamboats on the river?

A. Yes, sir; that was part of my business.

6 Q. The painting of those boats?

138 A. Yes, sir, that was my advertisement in those days, steamboat painting.

7. Q. Do you remember where there was any yard where this painting was done, where the boats were drawn up for repairs?

A. There was a ship-yard.

8. Q. Where?

A. It was on the east shore of the little channel of Island No. 3.

9. Q. Was that where you did your work?

A. Yes, sir, from that way up, well, towards Pearl street.

10. Q. How long did your work in that yard continue?

A. In the spring season of the year, seasons the weather would permit we would work on the ice; the seasons we could stand it at all we would stand on the ice, and we would do the outside of the boats you know because that obviated the staging, and then get that done, and then do all the inside and particular work and so on, etc, until it got towards the opening of navigation, and then we would hurry up for the boats to get out.

11 Q. For how many years did you continue?

A. Along from 1853 on till they began to shut up the channel, from the time that Mr. Ball built the building there that is now Sweet's hotel.

12 Q. Do you remember what time that was done, what year?

A. I cannot tell you the year, but that is a matter of record that can be easily found out. I remember the whole transaction, heard it and seen it and worked on the building.

13 Q. You have been engaged in gathering shells and relics?

A. Yes.

14 Q. In that way have you been in the habit of going up and down the river?

A. Yes, sir, on all the islands and little bars and out in the water.

15 Q. How many islands were there in the river when you came here in 1850?

A. Four.

16 Q. What were they?

A. Island No. 1, so called—

Mr. CAMPBELL: I want to make an objection to this tes-

139 timony, as irrelevant and too remote in date from the time under consideration, twenty years after the patent under which complainant claims.

The COURT: Take the answer.

17 Q. What is the next one?

A. Island No. 2 and Island No. 3, and Robach Island No. 4 on the west side of the river.

18 Q. Where did the north of Island No. 1 commence?

A. It commenced about parallel with the Weston block, between Pearl and Lyon street now, the point of it, the north end of it was about parallel with the block, the old Alden block.

19 Q. Where was the south of it?

A. There was a little stream between there; it was pretty difficult to take and say exactly; it was almost, I should think, right down to what they call Island street now.

20 Q. Pretty near down to Island street?

A. Yes, sir, that is right back of the Eagle hotel.

21 Q. What was there between Island 1 and 2?

A. There was a little channel that worked through there,

22 Q. How did Island No. 2 lay with reference to Island No. 1?

A. It kind of lapped back a little, one lapping back a little of the other, you understand, the further south end of Island No. 1 began Island No. 2.

23 Q. The north end of Island No. 2 was north of the south end of Island No. 1?

A. Yes, sir.

24 Q. About how much north, if you remember?

A. I should think probably a couple of rods.

25 Q. Where was the south end of Island No. 2 as compared with any present monuments?

A. That went down to about the present line of Fulton street, a little north, a "leetle" north; when I say a little north I mean a rod; a rod or a rod and a half, probably.

26 Q. How is it in regard to the Grand Rapids & Indiana bridge?

140 A. That passed across the bridge there; I was on the island when they surveyed that and I noticed the end of the island where it came, and lots of circumstances that I fastened my memory with.

27 Q. How far below was the point of the island, below where the railroad at present crosses?

A. Probably three rods.

28 Q. Do you know where the ferry was; the old ferry?

A. Yes, sir; I see it run.

29 Q. That was about where Fulton street now is?

A. A little below it.

30 Q. Standing on the ferry—do you remember the large trees, any large trees, at the head of Island No. 3?

A. Yes, sir.

31 Q. Do you remember what those trees were?

A. I cannot tell you the kind by actual knowledge, but I know what they were called.

32 Q. Do you know whether those same trees are there now?

A. They are not; there is one there.

33 Q. Is it one of the same?

A. I guess it is, quite a large tree.

34 Q. Have you been familiar with those premises since?
35 A. Every year, right along, more or less.
36 Q. There is a large tree that stands south of Fulton-street bridge now; whether or not that is one of the trees that stood on the north end of Island No. 3?

Mr. CAMPBELL: I object to that form of examination; there is no necessity to put the questions in this leading form.
Mr. BUTTERFIELD: I will change that.

37 Q. Whether that tree that stands there now enables you to locate the former position of the head of Island No. 3?
A. Yes, sir.
38 Q. Where is the head of Island No. 3?
A. It was a little north; I guess the way that is there now that strikes the end of Oak street, and there was a patch, a small
141 patch, of very low ground, indeed, covered with bushes and rushes.

Mr. CAMPBELL: This is not responsive to the question.
Mr. BUTTERFIELD: I object to the interruption of the witness.
Mr. CAMPBELL: The witness is asked about the head of the island.
The COURT: He may as well stop when he answers the question.

39 Q. I want to ask you what is your recollection as to whether that tree is or is not where the head of Island No. 3 used to be?
A. To the best of my recollection.
40 Q. It is?
A. Yes, sir.
41 Q. What was there at that time just north of that tree?
A. The water used to run across there.
42 Q. You spoke about some bushes, where were they?
A. Right at the head of Island No. 3.
43 Q. How large a piece of ground was it; just describe it.
A. I cannot tell you the width of it or the length of it exactly, but it was not a very large piece of ground; I should think it was about—oh, I don't know; probably there was not over a half acre in the whole business, and it was so wet you daresn't walk on it; if you got onto it you had got to take off your shoes and stockings to go around on it.
44 Q. Was this in low water?
A. That was in lowish or medium stage of water; the boats could all run then.
45 Q. How far did this extend, this strip of bushes extend, up towards Fulton street?
A. I should think probably three rods; three or four rods; three rods.
46 Q. How was the depth of the water; deeper as you came north?
A. Yes, sir; it was probably two feet in the deepest part; two feet deep.
47 Q. How far was it from the head of these bushes to the south line of Fulton street as it is now?

142 A. Oh, probably it was three hundred feet; that is, the best of my knowledge; I cannot tell the exact number of feet because I never measured it, nor even paced it.

48 Q. This was the land with water over it?

A. Yes, sir; kept running over it.

49 Q. When you say there was not over half an acre of this ground, do you mean over half an acre above water?

A. That was the extent on top of the bushes; it was so wet you could not walk on it; you had to paddle around and take off your shoes and stockings and paddle around among the bushes there.

50 Q. Whether or not between Island No. 3 and these large trees and the ferry there was or was not any island there at that time?

A. No, sir; I never heard of anybody claiming there was an island there.

51 Q. You know the premises in question in this suit, do you not?

A. I don't know; I have not seen any details of it.

52 Q. You know the low land lying between the south line of Fulton street and the north line of Oak street, north of the big tree standing there?

A. You mean next on Waterloo street?

53 Q. Taking the land lying back of the old shore and between the old and the present shore, and between Fulton street and the big tree which you have spoken of, you know that land do you?

A. I know that land, every inch of it.

54 Q. Whether or not that land has been formed in there or has appeared since the time you came here?

A. Well, sir, there used to be a very narrow strip of land, a very narrow strip of land extending along on, I really believe the street is part of the strip of land today, that extends to Fulton street along on the shore; that east shore you understand.

55 Q. Yes.

143 A. And it goes right down and it was—there was where the ferry landing was; right there south of the present Tremont house, and the first thing that was put up there to use it for any purpose at all was Perkins & Andrews' coal yard, but that was south, quite a piece south of where the ferry started.

56 Q. You don't understand me exactly, this low land I have described is west of the old channel, of the old shore line?

A. West?

57 Q. West, towards the river and between the present line of the river and between Fulton street on the north and the big tree on the south, whether or not that has been formed since you first saw it?

A. Oh! yes, that has been gathering there all the time.

58 Q. Do you remember when they commenced to run steamers in the west channel in the river, in the main channel; by the way, which is the main channel?

A. The main channel and the main river, as I understand it, is the west river; that is, the main river.

59 Q. How wide is the west channel; the river west of the islands?

60 A. I cannot tell you the number of feet.

61 Q. How many times as wide as this steamboat channel?

A. Five or six times, I think; that is, by looking at it; I have swam across there and walked across there; I have walked right across there from Island No. 3 to the west shore of the main channel.

62 Q. Is it not a fact that steamers came up the river, in the main channel of the river, to the west shore, for a good many years prior to the digging of the present channel?

A. They used to land on both sides; on the west shore and on the east shore, but generally on the east shore because the city was here.

63 Q. The business was here?

A. The business was here. The reason the ship yard being there we used to be launching vessels or hauling them out for re-
144 pairs on the bottoms, and Mr. Ball owned the ship yard and he controlled the whole business, he owned the boats and owned the river, pretty deuced near, and he forebade them to come in there certain times and take the other branch, and if the order was on that side they did, and if it was not they stayed below at the lower landing.

64 Q. Do you recollect of seeing boats go across south of what is now Fulton street and out in the main river?

A. I have seen them cross there certainly, the "Michigan" and the "Algoma" and those boats.

65 Q. What stage of water was that?

A. The water was not what we call the lowest stage of water; the river was good, in navigable shape.

66 Q. Was it the highest stage?

A. No, sir, at the highest stage I have seen them islands all covered with water, every island; through the top of the trees with a canoe.

Cross-examination by Mr. CAMPBELL:

67 Q. How often did you see that?

A. I have seen it five or six times.

68 Q. When did you first see it?

A. I see it in, along in the—between 1854 and 1860; there was a time, they told me, it was higher than that; there was a mark on the trees there called high-water mark.

69 Q. High enough to cover the islands?

A. Yes, sir.

70 Q. That was before your day?

A. No, sir; I have seen them all covered since I came.

71 Q. I mean the marks that were there indicated, a high-water mark before you came.

A. It reached the high-water mark since I came.

72 Q. Whether the mark there indicated the waters had been that high before you came here.

A. That was on Island No. 1; there was big trees on that.

73 Q. How long did you stay here in 1850?

A. About two months.

145 74 Q. What season of the year?

A. In the fall of the year: I got here along in August, and I stayed until the fore part of October.

75 Q. Did you come here with a view of settling here then?

A. Yes, sir; Henry R. Williams caused me to come here.

76 Q. What did you work at then?

A. I was looking around to see the lay of the town and see what the prospects were; I was locating land.

77 Q. That was in the fall of 1850?

A. Yes, sir.

78 Q. Then you were gone until 1853?

A. I went back to make my preparations; I located land, quite a number of acres, on the warrants of soldiers of 1812, for soldiers and myself; I bought warrants and located lands.

79 Q. You came back at what time in 1853?

A. I left the State of New York in November, and I was a long time in getting here; I got here in January, and made the first trip over the Western made, the first train that came through.

80 Q. Over what?

A. The Great Western railway.

81 Q. You got here in the winter of 1854?

A. 1853.

82 Q. 1853?

A. Opened out and started business, and stayed right on since I got here; I was bound to bring my freight all along, and I came over to stay.

83 Q. You have stayed?

A. Yes, sir.

84 Q. And intend to awhile yet?

A. As long as I keep above the ground.

85 Q. How did you bring your freight into Grand Rapids at that time, by boat?

A. No, sir; there was a good deal came by boat; there was a friend of mine that started to take some of the land I located; he shipped all his stuff around the lakes, and they came up Grand river on the boat, and bought his outfit in this town.

86 Q. Yours were drawn over land?

146 A. Mine I had brought by wagon; I thought mine very valuable and I paid extra rates.

87 Q. Describe the condition of the east bank of the river, commencing say at Bridge street, running along down to Wealthy avenue, as you found it, when you came here, early in the year 1853?

A. That I could not exactly say, because I did not get here until late in the year 1853.

88 Q. When you did get here?

A. In 1854; I commenced right off in the spring of 1854.

89 Q. It was in January, 1854, was it?

A. December.

90 Q. Of 1853?

A. Last end of the year, 1853.

90½ Q. As you got her- in 1854?

A. In January of 1854 I was up ready for business.

91 Q. That is the time, I mean, whenever you got here?

A. The river, I noticed the lay of the land along through, and Canal street was in a very unimproved state, it laid I mean in its natural state, and when you got down to what is now Butterworth's factory, there was quite a little turn in there of the river, like a little bit of bay that struck in there, and I made enquiry why, what was the reason that laid so and how it was. They told me that was left in that condition on account of the logs north, finished for the canal, and that is how I found out that water-course, race as they call it now, was originally fixed over the canal and that is where the logs was to be, and they calculated to avail themselves of that and go down on the east side of the river with the canal.

92 Q. Was there any building between that point and the present line of Bridge street on the east line of the river at that time?

A. Yes.

93 Q. What was there there?

A. The river came along from that point and about one-third of the present site of the savings bank, run till it worked to a point, sharp point at the Sweet house as it is now. It was a little
147 bit of a frame building stood up on stilts thirty feet high, I guess, from the shore of the river.

94 Q. Who owned that?

A. All owned by John Ball, he owned most everything. Then it cut across from there to a building owned by Mr. Taylor, Daniel Taylor, to Wilder D. Foster—Wilder D. Foster's old frame building was there, and it kept drifting off southeast till it struck the barn of the Eagle hotel; then it bent a little by the old red warehouse and the yellow warehouse, which were docks, docks all the way along there, and the docks kept being built out a little further, and a little further until they got down to Barnard's; Barnard was running at that time; he was a bartender for Mr. Fisher—Mr. Fisher owned the Eagle hotel—and Mrs. Fisher; Mr. Fisher died and he married Mrs. Fisher, and then he got to be proprietor, and after that he went on and got a tax title on them lots where the Tremont house stands now. There was not but very little land there, it was river and there is where the ferry went across. So he sold out the Eagle and built that building and I finished it for him. And then a little further than that the ferry. There was a little kind of a run of water that came in there; it is turned into what is called the Fulton-street sewer, comes across there. Used to come across the foot of it right under the Indiana offices and meandered down through there.

95 Q. That sewer is on the south side of Fulton street?

A. Yes.

96 Q. And discharged into the present river?

A. Yes, sir, it turned there; it came out on Calder street and they turned it, it was marshy, the backbone of the sewer came out and it collapsed and fell in. You got along down there, the strip

of land was very narrow and you got down—well, I don't know the number of feet—passed by Oak street and then you struck
148 the ship yard; there was a stream of water came there and branched there—there was two branches where it crossed that road.

97 Q. Connected with the east bank of the river?

A. Connected with the east bank of the river.

98 Q. Did not go across to the island?

A. No; there was quite a volume of water came because the boats could go up to Calder street; I have seen them, and the only strip of really good land there was around them diggings was where the French laundry was.

99 Q. That is down on William street—Almy street?

A. No; the corner of Island street and Calder, on the southwest corner; that old building there.

100 Q. That was the highest point?

A. That was high.

101 Q. How was the line of Water street?

A. Water street was low and would overflow, and the river would run over it at high water; could not get along there sometimes; used to take the Grandville road out; I have seen it across Grandville road; Grandville road used to start in from what is Greenwich street, straight across where Meddler's houses were; you know the spot, and the houses were built in regard to the road, and it crossed then and went up here; struck Cherry street; it crossed a little east of Ellsworth avenue, and came right out to Martin Corwin's, where that new store is built by Mrs. Corwin; it came out there parallel with Grandville road.

102 Q. That land along the east bank of the river was low?

A. Low; it was low because we could haul out vessels; we had ways fixed; we had, I guess, eight or ten timbers, two feet or eighteen inches broad, laid right down into the stream, and then they put a castone on each side, and put horses onto them and hauled out vessels right on these ways.

103 Q. Just where was that, on the east bank of the river?

A. I could take you right to the spot; I know where the spring is we used to get the drinking water.

149 104 Q. Can you fix it now by any present monument?

A. It is below the present landing, where the canoe boats used to come in into the slip; it is dry now; they have dredged it and filled it up.

105 Q. The buildings there were, say between the present line of Huron street, over here, and Fulton street, as you found them in 1850, on the east bank of the river?

A. It made a bend in there.

106 Q. North and south, they were between those lines?

A. Yes, sir.

107 Q. Was there anything of a city west of the river?

A. It was scattered all over; on the west side, too.

108 Q. The main business is, then, and always has been on the east of the river?

A. Yes, sir; at Grab Corners.

109 Q. The business and the population?

A. Yes, sir.

110 Q. All those surveys and all those lines have been changed since?

A. They have been obliterated; it is difficult, without a person is very observing, to take you to a spot and locate it.

111 Q. How many warehouses were there when you came in here in 1850, east of the river?

A. There were three regular warehouses.

112 Q. And they were along the channel, east of the islands?

A. Yes.

113 Q. The islands made channels in the river?

A. Yes, sir.

114 Q. They were on the east side of the east channel?

A. Yes, sir,

115 Q. How many steamboats were there running on Grand river up to this city when you came here in 1853?

A. Running into this city from all points?

116 Q. Yes?

A. Probably six.

117 Q. How many of them ran down the river to Grand Haven?

A. Three.

150 118 Q. Where did the others go?

A. Up the river to Lyons.

119 Q. How far is Lyons up the river from Grand Rapids?

A. I cannot tell you, by river, but I can give you very near by rail.

120 Q. It is on the line of the Detroit & Milwaukee railroad?

A. It is a mile off it, the village is, and Muir lies on the railroad.

121 Q. By the railroad it is more than thirty miles; it is more than forty miles?

A. By river it is more than forty.

122 Q. By railroad? It is east of Ionia, is it not?

A. It is west of Ionia.

123 Q. Lyons is?

A. Lyons is east, the next station; that is, Muir is the next station.

124 Q. Muir, then Lyons is south?

A. A mile further south.

125 Q. Lyons is on the Detroit, Lansing & Northern?

A. Yes, sir.

126 Q. You don't know how far it was by river, but is it not at least double the distance it is by railway?

A. I should think it was fifty; they did not count it quite so much.

127 Q. The distance on the Grand river from this city to Grand Haven is how far?

A. I don't know, I have been it; I have travelled it; it is I should judge—I won't say positively how many miles it is because I don't know.

128 Q. It is thirty miles by railroad from here to Grand Haven?
A. It is further by river.
129 Q. Double that?
A. About that.
130 Q. It is——
A. (Interrupting.) Fifty miles I should think.
131 Q. From its mouth at Grand Haven and passing by
151 the city of Grand Rapids, the Grand river was navigable for steamboats to a distance of about a hundred miles?
A. It was further than that; it was up to Berlin.
132 Q. They did not cross the rapids then?
A. They went at high water across the rapids, the "Fairies' Queen" was brought over the rapids and the "Porter" was brought over.
133 Q. Then the rapids were where?
A. They commenced, the rapids commenced, about opposite Comstock's.
134 Q. Where is that?
A. Up at Sixth-street bridge. That is, they commenced there for business, and they extended down to about the foot of Island No. 2, and they have been made a great deal better in every year. That time there were rocks in there and I have seen many a raft stranded and wrecked in the river when it was rough.
135 Q. That was in the channel west of the islands?
A. In the regular river.
136 Q. The rapids were west of the islands, were they, and extended down to the south line of Island No. 2?
A. Yes, sir.
137 Q. That was about the natural condition of the river when you came here in 1850?
A. Yes, sir.
138 Q. So that the steamboat landings were in this east channel?
A. Yes, there were steamboat landings above the rapids.
139 Q. Except in high water they could not pass up and through on account of the rapids?
A. Oh! no.
140 Q. The steamers coming to these warehouses and landing in the east channel at that time, came through what way?
A. You mean how the freight was got there?
141 Q. The steamers, what line did they pass over? Generally came in east of Island No. 3 at the south end of the island and came up that channel east of the island?
A. No, when they made their passage down the river, from the mouth up the river, they took the big river right straight up, clear up over everything.
152 142 Q. Right over the rapids?
A. Right over bars and everything.
143 Q. When?
A. When it was high water.
144 Q. I am speaking of the ordinary navigation of the river?
A. They could not get by the bar.

145 Q. That could not cross through at all?

A. Oh! no, sir.

146 Q. I am speaking of the ordinary navigation of the river from Grand Haven to Grand Rapids on the east channel?

A. The navigation of the river was probably—the lower boats would bring freight up to these warehouses and they would carry it to us.

147 Q. I am speaking of the freight destined for these warehouses on this east channel. You say there were three that lay in north of the present line of Fulton street?

A. Yes, sir.

148 Q. They lay on the east bank of the channel opposite Islands Nos. 1 and 2?

A. They lay opposite No. 2.

149 Q. How did boats get there, coming from below; turn in at the east channel at the south end of Island No. 3?

A. Yes, or they would come in and sometimes go out around Island No. 3, on the east side of No. 3.

150 Q. That is only at times of high water?

A. In very high water they could go anyway.

151 Q. They could go over the islands?

A. Not all the time; that would take about three or four days, and then begin to subside—they would not dare to do that on account of the trees.

152 Q. They had generally got to get in and out there, would they not, through the east channel?

A. Yes, sir.

153 Q. They would leave the docks and go down through the east channel and round the south end of Island No. 3?

A. Yes, sir, except when they delivered freight on the other side of the river.

153 154 Q. I am only speaking of boats coming to and from these warehouses?

A. They came in on the east channel.

155 Q. That was navigable all the time was it not?

A. No, there was times when they could not get up any further than the lower island, clear away past No. 3.

156 Q. In that case they could not come up in the west channel neither.

A. They could not come up any further at all.

157 Q. Is it not a fact the east channel was always the deepest part of the river?

A. I have my doubts of that; I think the center of the main river, in the center, was about as deep as that is. Along No. 3, and just approaching No. 2.

158 Q. It was the usual course to come in and out through that east channel?

A. Yes, sir.

159 Q. That was ordinarily used as the navigable part of the river?

A. Yes, sir, all our business was there.

160 Q. How long was Island No. 3? Did you go over the entire surface?

A. I have been all over but never paced it.

161 Q. Was the surface broken?

A. It is kind of rolling.

162 Q. Was it covered with timber?

A. Yes, not very dense, but there was a good deal, a good many trees there, that is, No. 3.

163 Q. The big, long island that ran away down?

A. You mean No. 3.

164 Q. I mean No. 3, it lays some distance south of Fulton?

A. Yes.

165 Q. It was a very long island?

A. Quite long.

166 Q. How long?

A. I don't know how long; I should think four or five acres in it.

167 Q. It was long north and south and narrow east and west?

A. Yes, sir, highest towards the west side of it.

154 168 Q. Where was the highest point of that island?

A. Towards the south.

169 Q. Did you ever go onto the island and fix by any means of your own or by any marks where the head or north point of that island was in 1850?

A. No, sir, I did not have a compass with me.

170 Q. You have already stated about where the south line of Island No. 2 came; of them two islands that was the one that extended further south?

A. Island 2.

171 Q. You have spoken of a strip of land in there on which willows were growing, laying to the north of the long island?

A. Yes, sir.

172 Q. Did you ever cross or recross on the ferry?

A. Yes, sir.

173 Q. In coming out in the river, the west channel, did that ferry boat run north or south of that willow strip?

A. North, straight across the river, had a cable across the last of it. The last time it was run it was when all the bridges were gone on the river. Bridge-street bridge was burned and they re-established the ferry again, and Barnard run it and run a cable across and put a spar down, hitched the cable on to it, and way over by the warehouse on the other side of the river he put another spar down and had the cable drawn taut on them, and they would take the boat hand over hand, and take the passengers right across from one side to the other.

174 Q. Have you ever been on Island No. 1?

A. Yes, sir.

175 Q. On No. 2?

A. Yes, sir.

176 Q. On 3?

A. Yes, sir.

177 Q. Did you ever go on what you call the strip?
A. Yes, sir, when as I told you, I had to take off my shoes and stockings.
178 Q. Other people did not have that trouble?
A. People never went on there.
155 179 Q. Mr. Ringuette went on there and got his pigeons, did he not?

Mr. BUTTERFIELD: That is objected to as not being a correct statement of Mr. Ringuette.
The COURT: Take the answer.

180 Q. Do you say that there was no part of this strip that was ever exposed and out of water at any time?
A. Oh! yes, it was, because there was times when you could walk clear across from shore to shore, and that would be exposed and dry.
181 Q. Whether at any other times?
A. How, other times?
182 Q. At other stages of the water?
A. The water had to be low for that to be out of water.
183 Q. In 1850?
A. 1854, 1855, 1856, 1857, and along there.
184 Q. What did you go on there for?
A. I was hunting for shells.
185 Q. When did you go on there first?
A. Along about 1856, I guess I was on there, and on No. 1 and No. 2, wherever I could get more shells.
186 Q. I am only talking about this strip which we call Island 5?
A. The reason why I could not do much on that was the water flowed over and nothing could rest there.
187 Q. There were times when the water was high you could not get on the other islands?
A. That was when it was very high water.
188 Q. Not so very high?
A. It had got to be high, you can bet, across any of those channels.
189 Q. Was there times you could not get onto Water street on account of the waters?
A. A few times.
190 Q. There was times when the water was so high you could not?
A. Yes, sir.
191 Q. How long was this strip? You say about half
156 an acre; you could see willows there.
A. A kind of patch as you got at the head of the island.
191½ Q. What was the shape of it?
A. I don't know.
192 Q. Square or round?
A. Kind of heart-shaped, as it would form at the head of the

island; you could not square it. I said in my testimony if you took every inch of it you might make half an acre.

193 Q. I am asking for the general shape?

A. Shape of a bow.

194 Q. These willows were growing there? Was there anything else on the island?

A. No, sir.

195 Q. Any trees there?

A. Not on that little island; it was not an island. It was contiguous to No. 3. We did not call it——

196 Q. (Interrupting.) Who did not call it?

A. People.

197 Q. Did you know the United States Government called it an island?

A. No, sir.

198 Q. Do you know they sent a surveyor to survey it in 1857?

A. No.

199 Q. You don't know anything about it?

A. I don't know anything about the surveyor business.

200 Q. You know there were willows growing there?

A. The willows were high as that.

201 Q. In feet how high were they?

A. Probably two or three feet.

202 Q. You never saw any trees there?

A. No big trees there I never saw.

203 Q. Was there any?

A. Those little bushes, they were bushes, I ain't sure whether they were all willows.

204 Q. What were they if they were not willows?

A. Bulrushes.

205 Q. Were there any willows or any bulrushes in any part of the river?

A. There was on Island No. 2.

206 Q. On some parts of it?

A. Yes, sir.

207 Q. Were you ever on there more than once?

157 A. Yes, to go on there; yes, I have been on there four or five times that time, and since I have been on it, but I don't know; I was on it when I was hunting stuff; I did not notice the land later, but at that time especially I noticed it.

208 Q. Did you ever see it when it was exposed and uncovered by water?

A. That piece you speak of?

209 Q. Yes, sir?

A. Yes, sir.

210 Q. When did you first see it?

A. I saw it along the first year I came here.

211 Q. Have you any interest down in the islands down in the river?

A. No, sir.

212 Q. An interest in this question of riparian rights?

A. I am, above the river, way at Lowell, I have a half mile of frontage there.

213 Q. You are not much in favor of islands in the river?

A. I once liked to see—I have bought lands in the river, had a surveyor look them up for me, John F. Tinkam, and noted them.

214 Q. Were there any timbers on this strip?

A. There was hard wood—logs laying.

215 Q. Yes, sir?

A. Not on number 3.

216 Q. I am not talking about anything but this strip?

A. No timber; only a log that would get stranded there; but it did not lay long, for the water would take it off.

217 Q. Things have changed there more or less since you came there in 1854?

A. Yes, sir.

218 Q. The channel has been filled in there east of the islands?

A. Yes, sir.

219 Q. There is a depression there today, marking the line of the old channel—depression in the ground?

A. Yes, I have looked at it some, and tried to follow it down for my own gratification, not in regard to this suit at all; but I have always watched it and noticed where the bridges were being built along at Pearl street, and along at all the bridges that cross there.

158 220 Q. Have you gone there and made any examination of it with a view of your testimony here; to refresh your recollection?

A. Not any.

221 Q. How long since you have been there?

A. I have been there every day or two.

222 Q. The last time you were there?

A. I don't know when I was there; I was there last week; but not in regard to this suit at all.

223 Q. You testify entirely from recollection, and not any recent examination of the land?

A. I know them lands; looking back, I can go straight there.

224 Q. Have you done it, is the question I am asking?

A. Done it for this purpose?

225 Q. Yes?

A. No, sir.

226 Q. Have you done it recently for any purpose?

A. Only for curiosity, to watch how things were doing.

227 Q. You state them as you recollect them, without any verification by examination of the land?

A. I did examine the land by looking at it. I didn't hardly understand your question.

228 Q. You do undertake to state here the exact lines?

A. Yes, sir.

229 Q. Are you stating them from recollection, or have you verified them by examination?

A. By looking at the streets.

230 Q. When?
A. All the time; I have continually watched.
231 Q. No examination with any particular reference?
A. No, sir; not with reference to a lawsuit, or anything of that character; I had no idea of that.
232 Q. Your recollection may or may not be correct?
A. I don't know, I leave that to the rest.
233 Q. You believe it to be?
A. I am willing to swear to it.
159 234 Q. Those trees that stood on Island No. 3, they were hard-wood trees?
A. Yes, sir.
235 Q. Over what part of the island did they grow?
A. Over the whole of it, more or less.
236 Q. How many trees are there, there standing now?
A. I cannot tell that.
237 Q. Are there any?
A. Yes, sir.
238 Q. Where?
A. I cannot tell you where they stand; I know about that there is trees there, and the greater portion of them are on the west ridge along towards the south end, I should think; there has been some cut off and carried away, they steal timber there, all the timber; they are all the time hooking timber.
239 Q. If they were there once they are there yet or have been taken away?
A. The way they gather flood wood—it is flood wood when they can get a limb down.
240 Q. In your direct examination you were asked about one certain large tree?
A. Yes, sir.
241 Q. Did you have any one particular tree in mind?
A. There were two trees on the head of the island there.
242 Q. Where do they stand now?
A. There is one of them left I believe.
243 Q. What kind of a tree is it?
A. I cannot tell you.
243½ Q. What kind of wood?
A. I cannot tell you the wood.
244 Q. Cannot tell the wood?
A. No, sir, although I have dealt in timber and so on, etc., that is one of the things I cannot very well tell, except it is a butternut tree.
245 Q. This stands——
A. (Interrupting.) Right at the point where the island used to be.
246 Q. Do you swear that tree marks the head of Island No. 3?
A. It is one of the trees. It is not the head of it; there was one, I think, a little further to the north of that.
160 247 Q. Do you know what they called it?
A. One was called a sycamore tree.
248 Q. Is this the sycamore, standing now?

A. I think not.

249 Q. What was the other called?

A. I think it was an elm tree.

250 Q. This is the elm tree standing there now?

A. I think it is; I won't swear positively to that.

251 Q. Is it what they call an elm?

A. I think it is; I have not viewed it with any purpose; have not had any purpose to mark it expecting to be called as a witness; if I had, I would have ascertained what tree that was, you bet.

252 Q. Did you ever mark it in any way as marking its presence on the island?

A. No, I never carved trees; I was on better terms with them.

253 Q. Do you undertake to swear positively that was the tree that stood on Island No. 3?

A. That is one of the trees.

254 Q. And it marks the head of Island No. 3?

A. It is about at the head.

255 Q. How far off from the head?

A. It depends whether you call the strip of bushes the head; if you will define.

The COURT: Independent of the strip.

A. The strip went on, it was lower land, if you call that land that was low.

256 Q. It was part of that Island 3. Was it extended north?

A. I speak of land that was joined to 3 and belonged to 3.

257 Q. This belonged to 3?

A. Yes, sir.

258 Q. This tree stood on the higher ground of 3?

A. It was not very high, it was right where what was land started.

259 Q. This particular tree stood?

A. The two trees.

161 260 Q. You have marked them?

A. No, sir, I have not.

261 Q. Do you swear that they are——

A. (Interrupting.) My view of them, they are the trees to the best of my knowledge and belief.

262 Q. That stood there at the beginning of the high land on the head of Island No. 3?

A. That is the best of my knowledge.

263 Q. Island No. 3, at the lower end, extended further north?

A. It embraced that willow patch.

264 Q. And run how far north?

A. It ran, I should think, probably, three rods—two and a half rods.

265 Q. What was there north of that?

A. Water.

266 Q. How far?

A. I should think, probably, three hundred feet.

267 Q. Up to what point?

A. The end of Island No. 2, that came down to a point.

The COURT: What do you say is the length of that willow strip?

A. I should think about three rods, I said, I think, somewhere about that; I never measured it at all; I cannot state; it may have been more and it may have been less; I cannot state positively; I never measured any of those points for the purpose of giving testimony.

Recess until two o'clock.

THURSDAY P. M., *April 24th*. 1890.

268 Q. You stated on your direct examination, over this willow part here, you paddled around among the bushes in a boat?

Mr. BUTTERFIELD: That is objected to.

A. No, it would be a difficult thing to get in among those bushes with a boat; it depended on what the stage of the water was there.

269 Q. At times of high water, when you rowed over the other islands in a boat?

A. Yes, sir; the water would not be so awful high to get over this.

162 270 Q. That means the elevation of it was lower than some parts of the other islands?

A. It was just a kind of raised, sand place, lower than the islands; went right up to the islands. This was a low place like, where sand would gather.

271 Q. The islands were simply places where sand had gathered some time?

A. We were not on earth then.

272 Q. The body of all the islands were sand, with more or less covering of vegetation?

A. All the city is if you come to that. It may have been a thousand years ago.

273 Q. What is the difference between the natural surface of Water street and the surface of this strip?

A. Water street at the present time?

274 Q. No, the natural surface?

A. At that time?

275 Q. Yes.

A. Well, sir, I should think there was probably five or six feet difference in the level—well, six or seven feet in the level of the street, it was not much of a street, it was just a roadway that naturally they traveled over—wasn't graded.

276 Q. I mean the natural surface of the ground where Water street is?

A. It is a great deal higher than it was then.

277 Q. In its natural condition I have spoken of, the water would be pretty high to be on Water street?

A. It would have to be enough to flood the islands and get over the street. They used to have to come in on the Grandville road when they drew plaster from the Godfroy bed, during the existence of the Godfroy bed, and the Godfroy bed has been opened out in my time; they used to have to draw plaster by the upper road, some hilly to get into town, but they preferred to take the river road.

298 Q. Because it was nearer?

A. Because it was more level and easier to travel.

279 Q. The Grandville road was?

163 A. No, this road right by on the bank of the river, coming from the ship yard and through there.

280 Q. On what is now the line of Water street?

A. Yes, sir.

281 Q. And why did not they take that road then?

A. When the water was up they had to go on the Grandville road; that would have water all over it.

282 Q. So they could not use it?

A. Yes, could not get along. Godfroy laid out a great deal of money in raising that road.

283 Q. Do you say you never heard anybody claiming this was an island there on the site of this strip?

A. That is actually so; I never heard any such a thing until probably within a year or two.

284 Q. Never heard of it at all?

A. No, sir; because there weren't any there, there weren't actually any land. I can show places between Bridge street and the lower railroad bridge, I can find two better islands in the river today than that ever was, that has got grass growing on them, and they have been formed in my—to my certain knowledge they have been formed; I will swear that they have been formed within the last ten years.

285 Q. Did you understand that you were asked about that?

Mr. BUTTERFIELD: That is objected to.

286 Q. Did you understand you were asked about any other islands?

A. I begun to state the margin of the river.

287 Q. I did not ask anything at all about the margin of the river. You made that statement that you never heard of this being an island?

A. I said so and I say so yet.

288 Q. What has that got to do with the condition up by Bridge street?

A. I could find——

289 Q. (Interrupting.) Suppose you could find seventy,

164 would it have anything to do with this?

A. You asked me the question, what had been the state of the lay of the land from Bridge street down the river?

Mr. CAMPBELL: Are you going back to answing any questions ever asked you or answer the questions asked now?

Mr. BUTTERFIELD: I object to this as not proper cross-examination.

The COURT: I think it is not exactly correct, this talk now with the witness. If you think his answer goes beyond the question and is not responsive, I think the proper course would be to move to strike it out.

Mr. CAMPBELL: I move to strike it out.

290 Q. Answer the question or explain your statement on direct examination that you never heard this was an island.

Mr. BUTTERFIELD: That is objected to, the witness having already stated four or five times.

The COURT: Take the answer.

A. I never did.

201 Q. Do you know where these lots are now of Mr. Butler's? Do you know where Brien & Ball's subdivision is?

A. I know about.

292 Q. Where is it?

A. It extends south from Fulton street down to where it strikes the Ellsworth addition, that is on Cherry.

293 Q. What street does it front on?

A. Fronts on Waterloo street, that is, I think that is it.

294 Q. Between Fulton-street bridge and what you call the head of Island No. 3, there is land there now, high and dry, is there not?

A. Along on the river?

295 Q. Yes?

A. Oh! yes, it is high and dry, filled-in lots.

296 Q. Did you have anything to do with filling it in?

A. No, sir; I know about when it was filled in though,
165 that is I cannot give you the date and parties that filled it.

Redirect examination by Mr. BUTTERFIELD:

297 Q. At the time when you testified you went onto this willow place by wading what was the state of the water in the river, high, low, or ordinary stage?

A. It was a little lower than the ordinary stage.

298 Q. You spoke of steamers going up over the rapids. As a matter of fact that was only in extraordinary high stages of water they could get over the rapids?

A. They availed themselves of that at that time.

299 Q. Did you ever know, and, if so, how frequently, of boats coming up—boats destined for the east side, with freight to be delivered on the east side, coming up on the west side of Island No. 3 and coming in to the dock?

A. I have seen them come in.

300 Q. How frequently?

A. Not very frequently; they used to come around that way and used to go out back that way sometimes when they would wind away up at Pearl street.

301 Q. Whether or not that was in ordinary stages of water?

A. That would be at high stages of water.

302 Q. How was it about boats getting up to the west side, by going over to the west side by the main channel—whether or not they went up there regularly for several years?

A. They went up there off and on for quite a long time; one boat was burned over there.

Recross-examination by Mr. CAMPBELL:

303 Q. How many years had you lived here before you saw a boat go north by the main channel, the west channel?

A. Well, I don't know about how many years it was. They did contemplate at one time there——

304 Q. (Interrupting.) Never mind that, what did they do?

A. I can't give you the year.

166 305 Q. Was there any warehouse or dock on the west side of the west channel of the river when you came here?

A. There was a kind of board warehouse, a rough one, and a new one has been built since.

306 Q. The steamers run over there?

A. Yes, sir, had a regular dock.

307 Q. Going there, or coming away from there and going to the docks on the east channel, over what course would they go?

A. If the stage of water was such, they would cross right over; if not, they would go down the river on their regular trip or discharge their freight and tow it over.

308 Q. Did you ever see a boat pass from the docks on the east side of the river over to the one on the west side, either way?

A. Yes, sir.

309 Q. What way did they cross?

A. They crossed below the island at that time.

310 Q. Way below Island No. 3?

A. Yes, sir.

311 Q. That was the usual and ordinary way of going except when the water was high enough?

A. Yes, sir.

The COURT: Can you not waive the preliminary proof in regard to the identification of the record, and let them make the offer that they want to?

Mr. CAMPBELL: We admit those are books in the office of the register of deeds.

Mr. BUTTERFIELD: Let the admission be.

The register of deeds is sworn and the following books from the records of the register's office of the county of Kent, being part of the records, were offered in evidence, containing the following deeds:

Mr. KEENEY: We first offer in evidence the Scranton abstracts as they existed before the fire, covering a burned record. That is the patent issued by the Government of the United States to Lucius Lyon and E. B. Hastings, found in Liber M of Deeds, page 450;

167 date of the patent, November 5th, 1833; date of record, September 26th, 1849, covering the north fractional half of the southeast quarter of section 25, town 7 north, range 12 west.

Mr. CAMPBELL: Is that all the evidence you propose to give of the patent?

Mr. KEENEY: Yes, that is the abstract. Do you want us to make proof about it being burned, etc.?

Mr. CAMPBELL: If this is the only evidence of such a patent as

that is, we object to it as incompetent and immaterial as establishing any or settling any point in controversy here.

The COURT: Have you not the patent itself?

Mr. BUTTERFIELD: We have not; it has been burnt.

Mr. CAMPBELL: There is a record of them. This is different from an ordinary case. It is not sufficient to show the United States patented this land to somebody, but the question is how much this patent covered. It is not only necessary to have the patent but also a survey of this quarter section.

Mr. BUTTERFIELD: We differ with you on that.

Mr. CAMPBELL, continuing: This man claims half the Grand river under a patent, a certain quarter section. The terms of that patent become a material thing in the case. The form of this patent—it conveys such and such a quarter section, containing so many acres according to United States survey, and the court—the mere entry of the fact that the United States patented this quarter section, so far as this entry is concerned on this book, does not throw any light on the subject here at all.

The COURT: I don't suppose it is possible to determine from that abstract what was contained in that north fractional half of that quarter.

Mr. CAMPBELL: That is the reason of the objection.

The COURT: How can we tell from that abstract without a survey?

Mr. BUTTERFIELD: We will have to introduce further
168 proof as to what this subdivision contained. As to the proof that there was a conveyance of this subdivision from the Government, we offer this in evidence.

The COURT: You claim this shows the Government conveyed the north fractional half of the southeast quarter of section 25, whatever there was in it?

Mr. BUTTERFIELD: Yes, sir.

The COURT: And propose to show by the survey or other proof, what there was in it?

Mr. BUTTERFIELD: Yes.

The COURT: Go on.

Mr. CAMPBELL: We make the objection to this as incompetent and immaterial.

Mr. KEENEY: We next offer in evidence a deed, recorded Liber 24 of Deeds on page 6. This is a deed from Lucius Lyon and E. B. Hastings to Charles C. Trowbridge, dated 24th day of April, 1834; recorded the 13th day of May, 1834; consideration $2,000, covering an undivided two-thirds of a certain——

Mr. CAMPBELL: What is the description?

Mr. KEENEY: This piece of land, situated in the Territory of Michigan, described as follows: The east half of section 24, in town 7 north, range 12 west, containing 135 acres, and the north fraction of the southeast quarter of 25, 7 north, 12 west, containing 48 acres. Transferred from pages 99 of Liber B of the Kalamazoo county records.

Mr. CAMPBELL: We object to the introduction of this deed, as incompetent, irrelevant, and immaterial, and for this reason, in the

present state of the proofs as to the conveyance of this land by the United States Government, and as to what it conveyed in the first instance to Lyon and Hastings. The subsequent conveyances that were made under these parties are wholly immaterial, and
169 it is perfectly useless to go into it unless the parties have other proof here as to what the Government conveyed.

Mr. KEENEY: We next offer the conveyance found in Liber 24 of Deeds at page 10, which is a conveyance from Lucius Lyon to Arthur Brunson, which is dated the 26th day of May, 1834, recorded the 11th day of July, 1834, covering the equal undivided one-sixth part of the east fraction of section 24, and the undivided one-half of the north half or part of the east fraction of the northeast quarter of section 25, said north half, or part, containing about 36 acres; and the equal undivided one-sixth part of the north half of the southeast fraction No. 25; the whole of said north half containing 48 acres, be the same more or less, according to the published surveys of the lands of the United States—being all in town 7 north of range No. 12 west.

We next offer the conveyance found in Liber 24 on page 61.

Mr. CAMPBELL: We make this same objection to all these subsequent conveyances.

Mr. KEENEY (continuing): From Charles C. Trowbridge to Nehemiah O. Sargent, dated the 6th day of July, 1835, recorded the 20th day of July, 1835, covering an undivided three-fourths part of his undivided two-thirds of the north fraction of the southeast quarter of section 25, in town 7 north, range 12 west, containing 48 acres.

We next offer a deed found in Liber 24 of Deeds on page 62, from Charles C. Trowbridge to Drury Fairbanks, dated the 6th day of July, 1835, recorded the 20th day of July, 1835, covering the undivided one-fourth part of his undivided two-third- part of the north fraction of the southeast quarter of section 25, in town 7 north of range 12 west, containing 48 acres.

We next offer the conveyance found in Liber 24 of Deeds on page 155, being from Arthur Brunson to Lucius Lyon, dated
170 the 4th day of December, 1835, recorded the 10th day of January, 1836, covering the equal undivided one-sixth part of the north half of the southeast fraction of section 25, the whole of said north half containing 48 acres, be the same more or less, according to the published surveys of the lands of the United States—being all in township No. 7 north of range 12 west.

Next offer the conveyance which is found in Liber 24 on page 193, being deed from Nehemiah O. Sargent and wife to Lucius Lyon, dated the 24th of February, 1836, recorded 25th of March, 1836, covering the undivided three-twelfths part of the north fraction of the southeast quarter of section 25, town 7 north, range 12 west, containing 48 acres.

Next offer conveyance found in Liber 24 on page 90, being deed from Drury Fairbanks and wife to Nehemiah O. Sargent. This seems to be a power of attorney, containing full covenants to convey, etc. Full power to convey, etc.

We next offer the conveyance found in the same Liber 24, on page 194, being a deed between Drury Fairbanks and wife, by attorney, of the first part, and Lucius Lyon, of the second part, dated 24th of February, 1836, recorded the 25th of March, 1836, covering the undivided one-twelfth part of north fraction of the southeast quarter of section 25, town 7 north, range 12 west, containing 48 acres.

Conveyance found in the same Liber, 24, on page 218, being a deed from Lucius Lyon to Nehemiah O. Sargent, dated the 21st day of January, 1836, recorded April 19th, 1836, covering the equal undivided one-sixth part of the north half of the southeast fraction of section 25, town 7 north, range 12 west, containing 48 acres.

Mr. BUTTERFIELD: We offer in evidence the tract book
171 from the office of the register of deeds, under the heading of section 25, 7, 12, containing 310 and $\frac{39}{100}$ acres; the north fraction of the southeast quarter, 48 acres, to Lucius Lyons and Eurotus P. Hastings. Date of sale, September 25, 1832.

Mr. KEENEY: We offer record of the deed found in Liber "A" of Deeds on page 70, from Nehemiah O. Sargent and wife to Charles H. Carrol, dated the 25th day of July, 1836, and recorded the 25th day of July, 1836, covering an undivided half of the north fraction of the southeast quarter 25, 7, 12, except a certain portion that does not touch any of the lands in question here.

Mr. CAMPBELL: We object to that statement. It does not appear whether it touches onto this land or not.

Mr. KEENEY: We next offer a conveyance found in Liber "C" of Deeds, page 104, which is from Drury Fairbanks and wife to Nehemiah O. Sargent, dated May, 1836, recorded May 16th, 1837, covering an undivided one-fourth of the undivided two-thirds of the north fractional half of the southeast quarter section 25, town 7 north, range 12 west. Also the record of a deed found in Liber "I" of Deeds, on page 63, from Charles H. Carrol to R. S. Rice, administrator of the estate of Nehemiah O. Sargent, dated the 2d of October, 1844, recorded September 12th, 1846, covering the undivided one-half of the north fraction of the southeast quarter section 25, town 7 north, range 12 west.

We next offer the record of a deed found in Liber 67, on page 635; that is a deed from Eurotus P. Hastings and wife to Lucius Lyon, dated the 6th day of May, 1834, recorded the 29th day of August, 1834. Covers the undivided one-third of the north fraction of the southeast quarter of section 25, town 7 north of range 12 west. (Full description is given in documentary evidence *post*.)

Also the record of a deed found in Liber "K" of Deeds, on page
571, being by N. O. Sargent, by R. S. Rice, administrator, to
172 James M. Nelson, dated January 11th, 1848, recorded April 15th, 1848, covering the undivided one-half of the land lying between Water street and Grand river.

Also a deed found in Liber "Q" of Deeds, on page 569, from James M. Nelson and wife to Daniel Ball, dated March 13th, 1852, recorded April 1st, 1852, covering the undivided one-twelfth of the land lying south of the quarter line and west of Water street.

Mr. CAMPBELL: Is that all the description?

Mr. KEENEY: That is on the Scranton abstract.

Mr. CAMPBELL: Are those records not here?

Mr. KEENEY: That, of course, is on the Scranton abstract, covering this——

Mr. CAMPBELL: Let us understand whether we are having the records.

Mr. KEENEY: I have been reading from the records and the Scranton abstract, but I don't find this on the Scranton abstract.

We next offer a deed found in Liber "U," on page 240, that is from James M. Nelson and wife to Daniel Ball, dated 29th of November, 1853; covers these lands situated in the said county of Kent, known and described as eleven-twelfths of an undivided half of all the lands lying between Water street and Grand river, in the town of Grand Rapids (now city) and county and State aforesaid, according to the Kent plat thereof, recorded on the 29th day of December, 1853, in the office of the register of deeds of said county of Kent, and being part and parcel of the same lands conveyed to said James M. Nelson on the 11th day of January, 1848, by R. S. Rice, administrator of the estate of Nehemiah Sargent, late of Wayne county, in said State, as will more fully and at large appear by reference to Record "K" of Deeds, on pages 571 and 572, in the register's office of the county of Kent, State of Michigan, reference being had thereto.

The next one is Liber "U" of Deeds, page 488, that is
173 from George W. Thayer to Daniel Ball, dated the 25th of January, 1854, recorded February 27th, 1854. Deed conveying all the lands, tenements, hereditaments lately belonging to Lucius Lyon situated in the village (now city) of Grand Rapids, and described in a certain deed recorded in Liber "L" of Deeds on folios 570, 571, 572 and 573.

Mr. BUTTERFIELD: We offer in evidence a deed from James M. Nelson and wife to Daniel Ball, Liber "Q" page 569.—

Mr. CAMPBELL: I don't raise any question about that; you need not go over the ground on that.

Mr. BUTTERFIELD: "L" 570, Lucius Lyon to George Thayer, recorded in Liber "L," page 570, dated March 26th, 1849; recorded March 28th, 1849. A general assignment of all property in Grand Rapids.

Mr. KEENEY: We next offer a deed in Liber 43 of Deeds, page 568, being deed from Daniel Ball and wife to Byron D. Ball, dated 8th of November, 1866, recorded 22nd of November, 1866, covering all that certain piece or parcel of land in the city of Grand Rapids, Michigan, known and described as that strip of land lying on the east bank of Grand river, west of Water or Waterloo street, bounded on the south by the Ellsworth plat, so called, to the said city of Grand Rapids; on the north by the north line of Fulton street; the parcel being on Kent plat of said city.

Next offer, Liber 58, page 573, which is a deed from Byron D. Ball and wife to Dennis W. Bryan, dated the 11th of March, 1869, covering that strip of land lying on the east bank of the Grand

river, and west of Water street, bounded on the north by the centre line of Fulton street, with the same continued westward to Grand river, and on the south by a line parallel with said north line, and five hundred feet northerly from the north line of Cherry or Ellsworth street, all according to Kent plat, intending thereby to
174 convey all that strip of land between Water street and Grand river, except five hundred feet off from the south end thereof.

The COURT: That would be five hundred feet.

Mr. KEENEY: Commencing five hundred feet north of Cherry and then running up to Fulton street, covering all these lands in question.

The COURT: That would be the same as five hundred feet north of Ellsworth addition.

Mr. CAMPBELL: This statement in regard to all the lands in question that, of course, is disputed; that is a remark of the counsel, and not part of the record.

Mr. KEENEY: I offer in evidence power of attorney from Charles H. Carrol to John Almy, recorded in Liber "A," page 291, dated August 1st, 1836, and recorded September 22nd, 1836, power to convey lands bought of N. O. Sargent. Also power of attorney from Lucius Lyon to John Almy, recorded in Liber "A" of deeds, page 289, September 9th, 1836; dated September 9th, 1836, and recorded September 22nd, 1836, power to convey land in the village of Kent.

Next offer in evidence a plat of Bryan & Ball's subdivision, found in Liber 2, or Plat Book No. 2, on page 17. There is a diagram here of the lands and the dedication, as follows:

STATE OF MICHIGAN, } ss:
County of Kent, }

Know all men by these presents, that we, Emery W. Muensher, civil engineer and surveyor, who made this plat of Bryan & Ball's subdivision, according to the plat of the village of Kent; Dennis W. Bryan and Mary E. Bryan, his wife, who executed this plat as proprietors of lots Nos. 1 to 17 inclusive; and Byron D. Ball and Martha M. Ball, his wife, who executed this plat as proprietors of lots 18 to 27 inclusive, do hereby certify and declare that the said subdivision has been laid out and surveyed and plated as a sub-
175 division to that portion of the plat of the village of Kent, now a part of the city of Grand Rapids, in the county of Kent and State of Michigan, bounded on the north by the center line of Fulton street, produced; on the east by the west line of Water street; on the south by the north line of Cherry street, produced; and on the west by the middle of the channel of Grand river. All the lots are numbered by progressive numbers, and the precise width of all the lots upon Water street are marked on said plat by figures. The east-ly and westerly lines of all the lots are made at right angles with the west line of Water street and extend westerly to the middle of the channel of Grand river, except where the angles and length af such lines are otherwise described by

figures on the plat. The figures indicating the length of lines represent feet and inches; the dots indicate angles, degrees and minutes.

In witness whereof, and in pursuance of the statute in such case made and provided, we do hereunto set our hands and seals the 28th day of September, A. D. 1867.

EMERY W. MUENSHER. [L. S.]
DENNIS W. BRYAN. [L. S.]
MARY E. BRYAN. [L. S.]
BYRON D. BALL. [L. S.]
MARTHA M. BALL. [L. S.]

Witnesses—
DAVID L. STIVEN.
P. J. G. HODENPYL.

Then follows an acknowledgment in the usual form. Our offer is of the plat and the dedication, with the acknowledgment and the diagram accompanying it. It is marked as received for record, October 2d, 1869, at 9:30 o'clock a. m. William G. Bockwith, register.

Mr. CAMPBELL: We object to this plat for the reason stated before to the second conveyance offered, and for the further reason
176 that so far as the western boundary of this plat is described it is made to cover lands that Bryan never owned.

Mr. KEENEY: We next offer deed in Liber 64, on page 171, that is a deed from Dennis W. Bryan and wife to John Butler, dated the 25th of March, 1870, recorded the 25th of March, 1870, covering lot 5 of Bryan & Ball's subdivision plat.

We next offer a deed found on Liber 64, at page 163, which is from Dennis W. Bryan and wife to John Gezon, Junior, dated the 23d of March, 1870, recorded the 23d of March, 1870, covering lot 8 of Bryan & Ball's subdivision plat.

Next offer the deed found in Liber 85, at page 362; it is from Dennis W. Bryan and wife to John Butler, dated 21st March, 1873, recorded 21st March, 1873, covering lots 6, 7 and 9 of Bryan & Ball's subdivision.

Next, a deed found in Liber 86 on page 264, which is from John Gezon, junior, and wife to John Butler, dated the 10th of June, 1873, recorded the 17th of June, 1873, covering lot 8 of Bryan & Ball's subdivision plat.

Next, the deed found in Liber 70, on page 191, from Dennis W. Bryan and wife to John Bole, dated the 15th of June, 1871, recorded the 29th of July, 1871, covering the north half of lot No. 13 of the Bryan & Ball subdivision plat.

Next, a deed found on Liber 79 of Deeds, on page 492, from John Bole and wife to James McHugh, dated the 1st of May, 1872, recorded June 27th, 1872, covers the north half of lot No. 13 of Bryan & Ball's subdivision plat.

Next, a deed found in Liber 81, on page 376, made by James McHugh to Jane A. McHugh, dated the 5th of November, 1872, recorded the 10th of May, 1873, covering the north half of lot 13 of Bryan & Ball's subdivision plat.

177 Next, a deed found in Liber 86 of Deeds, on page 95, from Jane A. McHugh and James McHugh, her husband, to James Ellett, dated the 12th of May, 1873, recorded the 20th of May, 1873, covering the north half of lot 13 of the Bryan & Ball subdivision plat.

Next, the deed found in Liber 103 of Deeds, at page 357, which is by Lawrence W. Wolcott, a circuit court commissioner of the county of Kent, a commissioner's deed in a case pending in the circuit court for the county of Kent, in chancery, wherein John Butler is complainant, and James McHugh and Jane A. McHugh and James Ellett are defendants, dated the 21st of September, 1874, recorded the 6th day of November, 1876, covering the north half of lot 13 of Bryan & Ball's subdivision plat.

Mr. CAMPBELL: Have you finished the offer of the record evidence?

Mr. BUTTERFIELD: All at the present time.

Mr. CAMPBELL: I would like to ask Mr. Rice a question or two.

NATHANIEL RICE, being duly sworn, on oral examination by Mr. Campbell, testified as follows:

Mr. CAMPBELL: The only purpose of this testimony, it appears, as some of these deeds, the records have been introduced; as to others, I think the abstracts; and I simply wish to show what records we have.

1 Q. Is Liber 24 here of deeds?

A. In the court-room?

2 Q. Yes, sir?

A. I cannot say.

3 Q. Has it been here?

A. I could not say.

4 Q. Is it in existence?

A. Liber 24 is in existence, yes.

5 Q. Liber 24 is in existence?

A. Yes sir.

Mr. BUTTERFIELD: And in the court.

6 Q. This tract book, what is that? Is that a certified copy?

A. It is a tract book of the lands that has been in the office since the organization of the county, I suppose.

7 Q. Is Liber "A" in existence?

A. No, sir.

178 8 Q. That was burned?

A. That was burned.

9 Q. Liber "C," is that in existence?

A. No, sir.

10 Q. That is burned?

A. Yes, sir.

11 Q. Liber "I"?

A. No, sir.

12 Q. That is burned up also?

A. Yes, sir.

13 Q. Liber 67 is in existence?
A. Yes, sir.
14 Q. Liber "K"?
A. No, sir.
15 Q. That is burned up?
A. Yes, sir.
16 Q. Liber "Q" burned?
A. I think it is, yes.
17 Q. Liber "U"?
A. Liber "U" is burned, yes.
Mr. KEENEY: Liber "U" was one of the preserved ones.
A. Of deeds?
Mr. KEENEY: Yes.
The WITNESS: I don't just remember the exact letters that are saved. There is only five or six.
18 Q. Liber "L"?
A. No, sir.
19 Q. That was burned?
A. Yes, sir.
20 Q. Liber 43?
A. Yes, sir.
21 Q. That is in existence?
A. Yes, sir.
22 Q. Liber 58?
A. Yes, sir.
23 Q. Also in existence?
A. Yes, sir.
24 Q. Liber 64, that is in existence?
A. Yes, sir.
25 Q. Liber 85?
A. Yes, sir.
26 Q. And 86?
A. Yes, sir.
27 Q. 70?
A. Yes, sir.
28 Q. 79?
A. Yes, sir.
29 Q. 81?
A. Yes, sir.
30 Q. 103?
A. Yes, sir.
31 Q. Those evidences of those conveyances in Liber A, C, I, K, Q, and "L," are from entries on the Scranton abstract?
A. On the Scranton abstract.
32 Q. What year was that fire?
A. I don't know the date, I think it was in 1860.
Mr. KEENEY: January, 1860?
A. Yes, sir.
179 Mr. BUTTERFIELD: Since the fire some of those deeds have been re-recorded?
A. Yes, sir, a great many of them re-recorded.

JOHN BUTLER, sworn on behalf of the complainant, testified as follows:

Examined by Mr. BUTTERFIELD:

1 Q. Your name is John Butler?
A. Yes, sir.
2 Q. You are the complainant in this suit?
A. Yes, sir.
3 Q. Do you know the premises described in the bill of complaint as certain lots of Bryan & Ball's subdivision? You knew what lots those were?
A. I don't know as I understand you?
4 Q. You don't remember the number of lots on Bryan & Ball's subdivision?
A. I think I do.
5 Q. And described in the bill of complaint. What are they?
A. Those that I am interested in?
6 Q. Yes.
A. There is 5, 6, 7, 8, 9, north half of 13.
7 Q. How long have you owned the premises described in the bill of complaint?
A. The first was March, since March, 1870.
8 Q. From whom did you then purchase them?
A. I purchased that of D. W. Bryan and wife.
9 Q. Was that the northern or southern portion?
A. That was the furthest north of my interest in; I had an interest in.
10 Q. What are the numbers of the lots on the plats, the number of the first you purchased?
A. The numbers of them I purchased?
11 Q. First?
A. The first one is 5.
12 Q. What did you do with reference to that lot? Did you take possession of it? What did you do with it?
A. I commenced building and improving.
13 Q. When was it you commenced building? How long after the date of the deed to you?
A. Well, it was very shortly after; I guess as early as May or June.
180 14 Q. Whether since that time you have resided steadily on the premises described in the bill of complaint?
A. I have.
15 Q. Whether since that time they have been in your possession?
A. Yes, sir.
16 Q. Will you describe, at the time you took possession of them, the position and appearance of those premises, commencing at Waterloo street?
A. From Waterloo street westward it was graded and good shape; about 100 feet deep.
17 Q. What west of that?

A. Next to that was water; in a dry time perhaps 18 inches deep; dead water; it didn't run; the channel at that time was stopped or blocked.

18 Q. Above?

A. Yes, above and below.

19 Q. How wide was this water?

A. This water then covered the lot westward perhaps 120 feet, or such a business; in the dry time I am speaking of now, when it got down dry. Before that there was no—nothing but water from there to the west shore of the river.

20 Q. Before what time?

A. Well, when I took possession and when I bought this, or shortly after, there was no land to be seen, except about 100 feet deep westward of Waterloo street.

21 Q. From that it was unbroken water clear to the west bank of the Grand river?

A. Yes, sir, quite a long time; I think in June somewhere; it was through me; I don't remember exactly how long——

22 Q. (Interrupting.) You spoke of the lot you first purchased. How was it with reference to the balance of this property which you now own, at that time? How was the water off back of them? About the same or different?

A. It was about the same; in the same condition.

23 Q. When was it that anything like dry——

A. (Interrupting.) This was when I bought, and this rise in the river; the water was sufficiently high in the river then to-;
181 at one time to cover 100 feet that I bought, and went more than across Water street at that time; and that was the appearance of all that I now own; that I bought right along there.

24 Q. When was it that anything like dry land appeared on the west of your premises?

A. Well, of course, it seems to me, it hardly became dry that year, or that I was in sand even, yet there might. There was a little spot of sand and sawdust appeared pretty much westward at right angles from my residence; the first lot that I bought; a small portion there that I could see; and it may have been that year, and it may have been—this is twenty years ago, but it strikes me there was some there and it was very small, and there was not no grass or anything growing on it.

25 Q. What is your age now?

A. I am 72 years old according to the general rule, I suppose.

26 Q. How long was it before it began, land began to show above water in dry times after that?

A. Well, after—you understand there might have been, but I am not sure; it almost seemed to me there did not anything appear there that year, yet I would not swear that it did not, but when it did it was fairly a light-colored sand, without anything growing on it, and nothing could subsist on it.

27 Q. Whether or not from the time—from any time that has—and if so, from what time that has increased, the deposit of that has increased.

A. Well, sir, that is from year to year that the little sand bar, that little sand spot increased, some years more than others, and it increased quite rapid of itself without any improvement from me; I was working that way after the first year, and considerably the first year.

28 Q. What was there in the course of the water or current that led that to increase rapidly, or caused it to increase rapidly?

182 A. There was a very obvious, natural cause for that filling; nothing miraculous about it at all, as I did witness it, and I did witness it, for that was my residence, and it was a very nice location, and I stuck there, and I live there now, but I bought it for a residence. The cause of that filling naturally of itself, the channel, the east part of Grand river was blockaded above and below this at that time. This was water that set in from the main river, without a current through particularly; and in high water, when the river was high and strike down in this bow and strike the hill, what we called the Miller hill, where the boat landing is there now, it served as a dam, and with that great rush of water that had previous to that filling, and previous to the grading of Water street, raising that, that was done the same year I bought, 1870. That water dammed there, and the heaviest force being westward, crowded itself back and made a current run right upstream by my premises. The way I could tell about that, barks, flood-wood, boards and sticks of timber, light pieces particularly, sometimes a board would strike down there, when a rush of water sent it back, and it was a curiosity to me to see the river, Grand river, running two ways, half of it north and another half south; and that is the fact, that is the way it run. This went westward and towards me, and at the same time some flood-wood would go the other way, and here they were passing, and as it went near the centre, over where this little sand bar is, the centre of these two currents meeting each other, those barks and things would nearly stop sometimes, whirl around, didn't know which way to go, like being as we was on the fence, and did not know whether to go to school or stay to home; so it made still water there, and very roily water caused by this action of high water; and where you place still water, water that is roily, still where it will settle——

29 Q. (Interrupting.) It formed a sort of whirlpool along the east bank of your premises?

183 A. Yes, sir; that caused that point to rise faster than it would otherwise, and it stretched along downwards.

30 Q. At the time you went there how much did this same condition of things back of your lot extend down the river?

A. It has filled the fastest, the heft of it, and fastest nearly opposite my place, and extended down to—it would fill the fastest up near Fulton street, not clear to Fulton street; there it remained open, but up as far as my place, my No. 5, and then it rather tapered off, slanted off as this double current kind of ceased; it settled here, and became more clear as it went down.

31 Q. I call your attention to the condition of things at the time you went there with reference to land showing above water. For

how far down south of what is now Fulton street did the same state of things exist, practically as behind your lot? How far was it the same as behind your lot, or where does any change occur?

A. I don't get your idea quite.

32 Q. You have described the condition of things when you came there back of lot No. 5, which was the first lot occupied by you. How far did that same condition extend down the river?

A. Downward?

33 Q. Downward?

A. It commenced near the old boat landing, there was the first trouble, and that interfered with the current of Grand river; it struck Island No. 3, and struck against the east bank there, and the channel being clogged across there, the Island No. 3 there, it stopped, and there is where it began to exercise and come back.

34 Q. I understand you to say from what is now the south line of Fulton street and the embankment at the head of the island, about the same state of things continued as back of lot No. 5, as you have described?

A. To the embankment, yes, sir, very near. This water running northward, that current came up, and it went beyond this, and then it had to stop and naturally broke off again through that
184 break where Fulton street is, a little south of it; that was all open, and it did not really, just with the force it went with, and went into the main current again.

35 Q. How far is it from the west boundary of Waterloo street on your premises to the east shore of Grand river as at present?

A. From the west boundary——

36 Q. (Interrupting.) To the east boundary of Grand river as at present?

A. From the west boundary of the street to the west boundary——

37 Q. (Interrupting.) To the east shore of the river?

A. To the river?

38 Q. Yes, to the river.

A. Well, that is about five hundred feet.

39 Q. What is the character of that land?

A. From Waterloo street to the river?

40 Q. Yes; back of your property?

A. Well, as high as the river has been this spring; it barely sets on the south part of my premises a little, but don't cover up the main part of it. When I went there and moved there it would have covered clear over; with the same height of water, I mean, that we had this year. Every spring lately I thought the water would have set higher, for, in fact, I knew it would. I don't know as it would went across the street, all over the land.

41 Q. Do you know where there is a single tree standing down there; a large tree standing down there on the line between the south side of Fulton street and the embankment, between—across the Island No. 3?

A. Yes, sir.

42 Q. North of that tree have there been any growing trees on that piece of land at all?

A. Not that I ever saw.

43 Q. Did you ever see any stumps or remains of any?

A. No, sir; I don't think there could have been a tree unless it was fifty or a hundred years sooner. The river must have been very different from any time I have known it.

185 44 Q. Did you ever see these premises before you went down there?

A. Before I moved there?

45 Q. Yes.

A. Yes.

46 Q. When were you first at Grand Rapids?

A. I was in Grand Rapids in 1855, the first time I was ever here.

47 Q. Were you down at that place then?

A. I went down to the boat landing.

48 Q. 1855 did you fix that?

A. 1845. Did I say 1855? I was here in 1845; yes, in 1845. I will tell you, it was the very year that Bridge street was built across Grand river.

49 Q. That is Bridge-street bridge?

A. Yes, sir.

50 Q. Were you down about this place at that time?

A. I did not live here at that time.

51 Q. Were you down on the shore at that time?

A. I walked down there.

52 Q. Did you see from the old ferry landing? Did you look to Island No. 3, where it stands now?

A. That is one thing I generally walked down there for.

53 Q. Whether or not there was any island where what is called Island No. 5 now is?

A. At that time I have no recollection of seeing anything that I should call an island, or I noticed anything like it, except some little bushes or little things.

54 Q. Down towards the head of Island No. 3?

A. Yes, sir; this was in the very latter part of summer, near the first of September.

55 Q. What have you done by the way of improving these premises described in the bill of complaint—in the first place, what have you used them for since you bought them?

A. Since I bought there?

56 Q. Yes.

A. Well, really I have never made very much use of it for
186 my own benefit; I let my tenants have it and work, and if they have a mind to give me any vegetables, like sweet corn——

57 Q. (Interrupting.) What has it been used for by your tenants?

A. They have plowed it, planted it with corn, potatoes, onions, cucumbers.

58 Q. How have you changed these lands or their position since you bought them? What have you done by way of filling?

A. The way I have kept right along improving the lots ever since I bought; whenever I have had an opportunity; and I did not go and buy where a load of earth would cost the most, but I sought places where I could get a load—or a yard of earth the cheapest.

59 Q. How far back from Waterloo street does your present filling extend? How far west from Waterloo street have you filled on those lands?

A. It is about—well, the first hundred feet I described first; I filled west of that.

60 Q. Beyond the first hundred feet how much have you filled?

A. The first hundred feet and from the street; from Waterloo street about 220 feet, perhaps.

61 Q. How high is that filling on the back part of it from the other ground?

A. The back that I improved?

62 Q. Yes?

A. Where it struck the filling, that struck the little island, that got to be raised, that is perhaps ten feet.

63 Q. Ten feet?

A. Something of that.

64 Q. What is the character of that filling? whether it is substantial or solid and good material, or what?

A. That is good, solid earth, solid as the hill that Mr. Ledyard built on; that was the first heaviest filling I put in there, and the like of it since.

65 Q. Whether or not the improvement of those premises has been at large or small expense?

A. It has been economically—I have none what I did as economically as I could; I don't know exactly.

66 Q. Whether it cost you one or two thousand dollars?

187 A. I probably paid more than a thousand dollars; I paid at first 25 cents a load, and afterwards less.

67 Q. When did you first commence to make these improvements on the lot?

A. I commenced in 1870.

68 Q. 1870?

A. I commenced the same year that I bought. I bought in 1870.

69 Q. They have been continued from time to time up to the present time right along?

A. The improvements?

70 Q. Yes?

A. Surely.

71 Q. What effect have they had on the value of this property; how is the value of the property compared with what it did before you commenced these improvements?

A. The probability is what there was westward of the one hundred feet would not have been no value in it at all, as it was, aside

from the improvement. If it is proper I can tell you why I come to such a conclusion: It is not only those lots but the highway by making the improvement; that was a heavier tax than it is there, which every load and every shovelful added to the worth of that property.

72 Q. Did anybody ever demand of you possession of the back part of those premises?

A. Never.

73 Q. Did any one besides yourself ever have any possession of them to your knowledge?

A. After I bought them nobody has had any possession but myself and my tenants.

74 Q. I want to ask you whether that land back of you and which is described as back of the hundred feet, on which you built, whether that has not substantially grown since 1870, or about there, whether it has not substantially become developed and raised since that time?

A. Surely it has, wonderfully.

75 Q. Whether or not at the time you bought, you purchased—you understood you were purchasing—to the center of Grand river?

Mr. CAMPBELL: I object to it.

188 76 Q. (Continuing:) Ever so informed?

Mr. CAMPBELL: That is objectionable as incompetent.

A. Oh! surely, I bought there, for all the record I could find showed it went there, and that is what I bought; I bought all the right that Mr. Bryan and his wife had, and I would not have bought unless I supposed it was so. I obtained the abstracts of title and could find nothing that amounted to any incumbrance.

The COURT: Do I understand your filling in the rear extends back to what is called Island No. 5, that raise there, the filling you put in there, did it extend clear back to that new ground?

A. That I first described as being a little white sand bar, yes, sir; this improvement that I made just goes to lap onto that a trifle.

77 Q. How far does this improvement of yours go beyond what was the east line of the river at the time you bought, the east shore?

A. From the time I bought it?

78 Q. How far did it go west of what was the line then?

A. It would average about 120 feet.

79 Q. This fill?

A. That may not be accurate, but pretty near that.

Cross-examination by Mr. CAMPBELL:

80 Q. You say that before you bought this that you examined the records and supposed that you were getting to the centre of the river?

A. Yes, sir.

81 Q. You examined Bryan's deed and supposed that he owned to the centre of the river?

A. Yes, sir.

82 Q. The description in Bryan's deed, the deed from Byron Ball and wife to Dennis Bryan in 1869 read as follows: All that strip of land lying on the east bank of Grand river and west of Water street, bounded on the north by the centre line of Fulton street, were the same continued westward to Grand river, and on the south by a line parallel with said north line and five hundred feet
189 northerly from the north line of Cherry or Ellsworth street, all with and according to the Kent plat of said city, intending hereby to convey all that strip of land between Water street and Grand river, excepting five hundred feet off from the south end thereof. Do you understand that description of land in his deed runs to the centre of Grand river?

A. I should think it did.

83 Q. You do?

A. I do now and did then.

84 Q. You think if a deed is given of all land between Grand river and Water street that runs to the centre of the river?

A. I certainly do.

85 Q. You swear to that?

A. I swear I think so; I thought so then.

86 Q. You understood what the deed read?

A. Yes, I think I did; I have got the same description in my pocket here.

87 Q. All land lying on the east bank of Grand river and west of Water street?

A. Yes, sir.

88 Q. Intending to convey all land between Water street and Grand river?

A. Yes, sir.

89 Q. You understood you owned, that description conveys land to the river?

A. Some is water that is there now, and it had solid bottom.

90 Q. I am asking you about this description. Is it this description that you understand runs to the centre of the river, the channel of the river?

A. I certainly do.

91 Q. There were two channels at an early day, the east and west channel? A channel running east of the island and the west channel?

A. I just on the start described the water run both ways.

92 Q. Answer the question: Was there ever at any time in the Grand river an east channel; a channel run in east of Islands 1 and 2 and 3, and the west, a wider channel west of the islands?

A. My answer, my view of that is this, that it would not be correct. I never saw a river, and I saw Grand river, and I
190 never saw it without seeing two sides to it; there would be an east side and a west side, and the water run on both, though one would be the east channel and the other would be west,

and that was the fact in this case. Those little islands, Nos. 3 and 2, little islands up here. That being the case, there was land back of the premises I bought, but no island there and without any island there. I owned from half way from the meander line of Water street to the meander line on the west. That is what I understood that I bought. I think still that is what I did absolutely buy.

93 Q. That does not answer the question at all. I am asking you to state whether or not, as a fact, there was any islands in the Grand river ever? Was there ever an island in the Grand river?

A. I understood there was four.

94 Q. Do you know whether there was or not? Did you ever see any?

A. See any islands?

95 Q. Yes?

A. I have seen all those four, and I have seen one grow up here until it ceased to be by improvement; again I see a little, very little sand bar grow up into a little island, as I stated here before.

96 Q. There was water running in east of these islands?

A. There was an east side of the river surely, or else it would not have been an island.

97 Q. There was an east channel east of the islands and a west channel west of the islands.

A. There was an east side of the river and the east water in the river run on the east bank, and the west run near the west bank and some in the center, and sometimes back, all turned and run both ways at the same time.

98 Q. There was a clear channel on the east side of all the islands, was there not?

A. If the river run and there was an island, there must have been water round on the east bank, and if it did, there would have been eastward of whatever island there was.

191 99 Q. There was an east channel?

A. That is the way I understood it.

The COURT: I think that is clear enough here by the proofs.

100 Q. When you say you understand that this description of land run to the middle of the river, do you swear you understood at that time and understand now it carries to the middle of the west channel, west of all those islands?

A. I say the land I bought run from the east meander line, or from the westward line of Water street to the center, between that and the westerly meander line.

101 Q. The west side of the river?

A. Yes, sir; half way, and run at right angles just as I bought.

102 Q. That is your understanding of this description I have read?

A. Exactly.

103 Q. Do you want us to understand you to say that you never heard of a place called Island No. 5 in the Grand river?

A. I have heard of that quite a spell.

104 Q. When did you first hear of it?

A. Not until after I bought and began to make improvements and had quite a large improvement before I heard any such thing.

105 Q. How long ago was that?

A. I bought in 1870 and I commenced improving——

106 Q. You bought lot 5 in 1870?

A. Yes, sir.

107 Q. And you bought lots Nos. 6, 7, 8 and 9 in 1873?

A. Well——

108 Q. At different dates in that year?

A. Between 1870 and 1873.

109 Q. You got them at the time your deeds are dated?

A. Yes, sir.

110 Q. The deed from Gezon is June 10th, 1873, and deeds from Bryan to lots 6, 7, and 9 is in March, 1873?

A. Yes, sir.

111 Q. This other north half of lot 13 you got in 1874 on a mortgage?

A. Yes, sir.

192 112 Q. Where does Bryan & Ball's subdivision lie? It lies on the east side of the river, does it not?

A. Yes, sir.

113 Q. What is the northern boundary of it? Fulton street, is it not?

114 A. Fulton street; I think it went a little beyond; Fulton street did not exist west of Water street when I bought there.

115 Q. You mean it was not laid out?

A. That is what I mean.

116 Q. You mean it was not improved?

A. The baby was not born.

117 Q. Have you ever examined the record of the Bryan & Ball plat?

A. Yes, sir.

118 Q. Don't you know then Fulton street is on the north side of it, of the Bryan & Ball subdivision of the Kent plat?

A. I know it is on the north side of it now; if you understand me, I say Fulton street did not cross the river and did not cross Waterloo street at the time I bought; and maybe the folks that helped to build it learned what way it was and what it cost.

119 Q. What is the eastern boundary of the Bryan & Balls subdivision? Waterloo street is it not?

A. Yes, sir.

120 Q. Does it not front east on Waterloo street?

A. Yes, sir.

121 Q. How far down does it run?

A. Bryan & Ball's, it runs somewhere to Cherry street, I guess. At the time I bought they divided it and Bryan took—seemed to have the ownership of the northerly portion from the boat landing down there.

122 Q. He owned it when he platted it did he not? From lot 1 to 17 when he platted it? Don't the plat show? Did you ever

examine that? There was never any division of that property between Byron Ball and Dennis Bryan, was there?

A. I——

123 Q. (Interrupting.) Isn't — the fact that Bryan owned
193 the south part and Ball owned the north part and they joined together and platted the whole?

A. I am not sure.

124 Q. Do you know; I am asking for your knowledge?

Mr. BUTTERFIELD: I object to the argument of counsel with the witness.

Mr. CAMPBELL: I am asking him to describe the situation of these premises.

A. When I bought there Mr. Bryan owned—I did not buy any of Ball.

125 Q. You bought from Bryan?

A. Yes, sir.

125½ Q. You had nothing to do with Ball?

A. I had nothing to do with Ball. What I meant by their dividing, I am sure that I am right, only I am well satisfied that Ball did not own any interest in that I bought. I say his interest commenced and went south from about the boat landing.

126 Q. Where did the numbering of these lots commence—Fulton street, the north end, or the other way?

A. They commenced at Fulton street.

127 Q. They are numbered one, two, three and so on down?

A. Yes, sir.

128 Q. Lots 5, 6, 7, 8 and 9 make one block, one parcel; they are right together from north to south?

A. Yes, sir.

129 Q. Those five lots are adjoining lots?

A. Yes, sir.

130 Q. Fronting east on Waterloo street and extending back?

A. Yes, sir.

131 Q. And then lot 13 is still further south of 2 and 3, the north half of lot 13?

A. That is further south; that is not connected with these five.

132 Q. How does the present west line of Waterloo street compare with the line of that street as it run when you bought there?

A. How does——

133 —. (Interrupting.) Is it, the west line of the street, substantially the same as then?

A. I think it is.

134 Q. To what extent was that street graded, filled and
194 improved when you bought in there?

A. It had been once graded, perhaps more, that I heard of, and the year that I bought there was a grade finished up, and I think I paid for it.

135 Q. Were you familiar, particularly with those premises down there south of Fulton and west of Waterloo street, before you bought? Had you ever lived there?

A. Never lived there.

136 Q. Had you been specially familiar with them?

A. Oh, yes; I was familiar with most any part of the town.

137 Q. Had you made just visits to— You never owned property?

A. No.

138 Q. And never were employed there?

A. I never worked on the river. On my own property I have.

139 Q. Until you moved there in 1870 you simply knew that as you did other parts of the city; as you visited it in leisure moments, is that the fact?

A. I don't know now whether I get your idea correct.

140 Q. Before you bought and went down there in 1870 you never had any particular examination; had never lived or owned property there?

141 A. I didn't own any then.

142 Q. You did not know any more about it than you had learned by ordinary observation when passing there or visiting there; is not that true?

A. Before I bought I examined it.

143 Q. Just before?

A. Yes, sir; and I had years before; I had known it and examined; been along there and observed it; Grand river was what brought me here in 1845. I liked to see all grand things, anyway, and I heard it was very grand. It was. I thought the first time I see it it was a grand river.

144 Q. Take the natural surface of the ground below Ful-
195 ton, south of Fulton and west of Waterloo street, including the street, has it been filled considerably now below what it was in its natural condition?

145 A. It was filled after I bought and about the time I bought. That year it was finished up about two and a half feet the grade, and since that it has been filled up between, nearly five feet.

146 Q. The present surface of Water street, which is now called Waterloo street?

A. Yes, sir.

147 Q. (Continuing:) Is about seven feet higher than the natural surface?

A. Just plumb that and more, if anything, it is more than that; it had been graded and there was— I heard something about tax title on that property there—maybe it included these parcels—for a street that they were working there; that street before.

148 Q. You really don't know what the natural surface was before you went down there and had anything to do with it; there had been some filling of Water street?

A. I think I was down there before there was ever much of any grading except shovelling out, taking logs and trees out of the track; it looked like a new country and a farm road; did not look like a street in the city, and, in fact, it was not a street at that time.

149 Q. Do you understand you saw the surface of that street in its natural condition before it had been filled?

A. There must have been some improvement before I was ever on it.

150 Q. How much higher than—lower than the present surface of the street was the natural surface, or the surface as it was when you first saw it?

A. Well, as a general thing it must have been in places ten to thirteen or fifteen feet.

151 Q. How in front of those lots of yours? those five lots, from five to nine? How much lower at that point was it than it is now?

A. I don't know that I could remember just that location.

196 152 Q. You are speaking generally?

A. Yes, sir, I am speaking generally as a street—as a street through the woods or new country, as being down to the like of that.

153 Q. How did the natural surface of the ground west of Waterloo street compare with the natural surface of the ground itself? Was it higher or lower? Did the land descend to the river, or was it level?

A. There was something of a bank; and well, one or two little streams let in there that came pretty near on a level; just enough to carry the streams in there.

154 Q. Were there any buildings on any of those lots on Bryan & Ball's addition when you bought in 1870?

A. Any what?

155 Q. Any buildings.

A. Yes.

156 Q. How many?

A. I think there were four.

157 Q. Where were they, north or south of your lots?

A. There was two north and two south of me.

158 Q. Was there any fence on the street when you bought there, on the west line of the street?

A. I think there was, yes; I think my lot—yes, there was a front fence there, and I think the lots I bought there, there was a fence around the back of them.

159 Q. When you bought?

A. Yes, sir.

160 Q. Is that fence there about on what is the west line of the street now?

A. What fence there is there?

161 Q. Yes.

A. There is none there except in front of me, and that is not a fence, it is simply a railing together.

162 Q. It is something that marks the west line of the street?

A. Yes.

163 Q. Is that about on the line of the old fence?

A. Yes, sir.

164 Q. The line, the west line, is substantially the same?

197 A. Our city surveyor and me on that plat marked out the place, and I built a sidewalk there, and the westward line of that walk is calculated to be on the line.

165 Q. Between Bridge street and Hall street, how many islands were there in the river when you first observed it?

A. The first I ever observed, there were four.

166 Q. Just describe them and state their location. Where was the one furtherest north?

A. I was up near Pearl street and Sweet's hotel.

167 Q. What was it called?

A. I think that was called No. 1.

168 Q How far south did that go?

A. I don't remember particularly.

169 Q. About how far, did it as far as Fulton street?

A. No, sir, I think——

Mr. BUTTERFIELD: This is objected to as not proper cross-examination.

A. The first island I could not tell very near how far it went. Number 2 there were some trees——

170 Q. (Interrupting.) How far north did it go?

Mr. BUTTERFIELD: The same objection.

A. I think Fulton street.

171 Q. It ran down to Fulton street?

A. I don't mean Fulton street—Pearl street.

172 Q. It did not run to Fulton street?

A. No, sir; oh! no.

173 Q. How much of a channel was there between that island and the east bank of the river?

A. I should call it rather a small channel.

174 Q. How wide?

A. We——

Mr. BUTTERFIELD (interrupting): The same objection.

A. In a low time it might be twenty feet or thirty feet, not to exceed that, in low time.

175 Q. How wide was it in high time?

A. Came up there—I have seen a steamboat, a lake boat, I think I once see a steamboat at Pearl street and Canal street and west——

198 176 Q. (Interrupting.) You saw a lake boat?

A. I think a lake boat, it was a large steamer.

177 Q. Where was the next island south of this one?

A. They lapped by each other a little; they were close together.

178 Q. What was this other one called?

A. No. 2.

179 Q. Was there a channel between them?

A. Yes; there could not have been two if there had not been something.

180 Q. How far down south did that extend?

A. Well, I think that bended along down towards the railroad crossing, over the end of it.

181 Q. Of the railroad bridge?

A. Yes, sir.

182 Q. With reference to Fulton street, how far?

A. It did not go to Fulton street.

183 Q. Is the railroad bridge north or south of Fulton street?

A. The railroad bridge is north of Fulton street.

Mr. CAMPBELL: We know all these things, of course, but we want to get them on the record.

A. That is good.

184 Q. You think the railroad bridge runs across what was the southern point of that Island 2?

A. I think so. In dry time there was land there.

184 Q. Of course. Where was the next island?

A. The next island was No. 3.

185 Q. Where was that?

A. That was right by that large old tree there somewhere.

186 Q. They were further south?

A. They were further south.

187 Q. That was a long narrow island running way down?

A. It is a pretty large island for the Grand river.

188 Q. Part of it is there today, is it not; a long strip at the steamboat landing?

A. Oh, yes, and a good channel there yet.

189 Q. The south part of it?

A. Yes, sir.

199 190 Q. How far was it between Island No. 2 and the north line of Island No. 3?

A. I could not tell.

191 Q. Give your best estimate of it; you never measured it, I suppose?

A. Well, my judgment would be quite imperfect about it. I remember the point of that island came down, I think, to the railroad bridge, cut across it, but it did not come, from my recollection, to Fulton street. I remember it before Fulton street was made there, or a bridge.

192 Q. Cannot you give any estimate of the distance between those islands; have you not got an impression on the subject?

A. I was about to tell you that it came to a point of that island in there near, pretty well towards Fulton street, for instance.

193 Q. Of the north island?

A. Island No. 2 came southward, very nearly the north side of Fulton; somewhere along in there. The way I remember that my residence being there, where I could look right in there, and when there was no bridge there and no Fulton street, I could look, and there was an open way through there, and it was all open from there clear down to Island No. 3, except it is a little part of the year. Once in awhile in the early part of this time of this island you think so much of.

194 Q. You think something of it, too?

A. Yes, sir.

195 Q. You started a suit?

A. Yes, sir.

196 Q. Give us some idea, if you can, in distance, and if you cannot, by some line, where the north line, that you call No. 3, was.

A. My idea of it is this, from all that I can recollect from the first time I came here: I moved here, to live here, the summer of 1852; from the appearance of those trees near there, appeared to be more trees, but those old trees that run beyond tried to get further from the water there; that is a good old tree; I remember it; that tree looks like an old friend; I think as much of an old tree as an old friend.

200 197 Q. What kind of a tree?

A. It is a homely tree, as has seen hard days.

198 Q. What is the wood?

A. I don't know but you have got me, but I should think that it was a rock elm.

199 Q. It is an old friend, but you don't know his name.

A. I call it an elm until I learn better, as I saw many a man in this city and I knew hundreds of those I know and quite well acquainted, and I could not tell the names.

200 Q. With reference to the north line of Oak street, if extended, about where would that strike that Island No. 3, if at all?

A. The head of that island, I don't mean. This tree I am speaking of was quite furthest north the trees that stood there. Mr. John Baars I think cut it down. I saw him cut it and saw it after it was cut; a soft maple tree. I think that tree that he cut was a little north of this big tree that is there now, and that taking that for the head of the island, the north end of Island No. 3, it would come some 200 feet, some over 200 feet—225 feet or 250 north of Oak street, center of Oak street.

201 Q. That was high and dry you think and trees growing on it?

A. Yes, sir.

202 Q. How much of a channel was there between Island No. 3 and the bank east of it? How wide was it?

A. My impression is that that water in that low time was not very wide.

203 Q. How wide was it in ordinary times?

A. I think my opinion is it was not far from fifty feet before it was dredged.

204 Q. How wide was the channel between Island No. 2, where it ran south of Island No. 1 and the river, and the bank east of it?

A. That distance has been varying so——

205 Q. In ordinary times?

A. Varied width of it. In ordinary times, take the thing right along there, all the time people came building, filling in there.

201 206 Q. I am speaking of the natural conditions there.

A. I could not say how wide that channel was before they made improvements there and built in there.

207 Q. You don't know?

A. No, I could not say.

208 Q. Have you ever seen steamers come up and down that channel from the south line of Island No. 3?

A. I spoke of one that I saw since I have lived there; not since I have lived in the city, for I lived just outside the city several years. What was your question?

208 Q. Whether you had ever seen steamers passing up through those channels.

A. That one I saw and I saw it accidentally.

210 Q. Where did that come?

A. From the lake, I guess.

211 Q. Did it come east of Island No. 3 through the channel?

A. When I saw it, it was making its way for—bending straight in there where Pierce built his clothing-house; that block.

The COURT: A river boat?

A. A river boat; it was a pretty large steamer; they said it run on Lake Erie.

212 Q. Was it in the channel between Island 1 and the east bank?

A. At that time I presume they could go——

213 Q. (Interrupting.) Where did you see it?

A. I saw it at the foot of Canal street.

214 Q. East of the islands?

A. East of the—well, I guess it would be; Canal street would steer a little against the island, a little east; it must have been a little east of the island.

215 Q. When you went down there in 1870 you commenced to build and put up your residence that year?

A. Yes, sir.

216 Q. And you have lived there ever since?

A. Yes, sir.

217 Q. And when you went there in 1870 you say that
202 the dry land, or what was called dry land, west of Water street, only ran back 100 feet?

A. About that.

218 Q. Did you ever take any measurements?

A. I never measured it, except pacing it off and so on. I commenced filling it right off and setting men to work there.

219 Q. Filling those lots?

A. Yes, sir.

220 Q. Now, you say west of that, when you went there, Water street back 100 feet, and then you struck the water of the Grand river?

A. Yes, sir.

221 Q. And there was nothing in the shape of land, then, back of those lots from — to 13, and below that in the shape of land clear to the west bank of the Grand river?

A. Nothing but that sand bar.

222 Q. How wide is the river from that east bank clear to the west; it is more than a quarter of a mile?

A. It would not be far from a quarter, it might be a quarter; I should not think it was much over that.

223 Q. You have spoken of a little island, a sand piece, in to the west.

A. Yes, sir.

224 Q. Describe that as it was when you first saw it, when you first noticed it, and what time of year was it?

A. I think it was the first I ever noticed there was anything there was after I bought the lots.

225 —. How long after?

A. After the high water in the spring went down was a little sand bar there.

226 Q. How large was it?

A. Well, as large as this room.

227 Q. This room is 20 feet wide and 100 feet long?

A. No, it ain't, 100.

228 Q. Seventy?

A. Yes.

229 Q. The surface of it was 70x20?

A. Yes, somewhere about that.

230 Q. Was there anything on the surface of it growing—bushes, willows or trees?

A. Not a spear of anything, nothing; for several years noth-
203 ing appeared there; the first there would be, that I remember, there, was weeds came up there after it began to fill and grow larger; growing, that was about the way of it.

231 Q. There was a time when the channel between Islands 1 and 2 and the east bank was filled, was there not? Do you remember the fact?

A. I remember when Mr. Foster was building there, and Sweet and them, and I remember they began to improve the banks—the east bank—and they formed kind of a company. I would like to have done that, but they just let me alone in my business. They are smarter down this way towards Waterloo street; my neighbors were smart enough to let me fight the whole thing.

Court here adjourned until tomorrow.

Cross-examination of JOHN BUTLER resumed.

Examined by Mr. CAMPBELL:

232 Q. Mr. Butler, as I understood you in your direct examination you stated that there had never been any possession of this Island No. 5, excepting such as your tenants had?

Plaintiff's counsel objects, the witness not having stated that he had any tenants.

(Mr. CAMPBELL:)

233 Q. Well, yourself and tenants, then; is that a correct statement? I mean, is it as you wished to state?

A. Well, my tenants never—I have never known except by general report; no one spoke of anything but this little sand bar. That was mostly back of my present residence.

234 Q. You are speaking of the ground as it now is?

A. Yes, sir; I have been improving these grounds, and didn't rent that lest the tenants would be in the way there.

235 Q. Have you been improving them? Has there ever been any *any* buildings there?

A. Improved by grading up with solid earth.

236 Q. Filling them?

A. Yes, filling them.

204 237 Q. Filling the lots back from Fulton street?

A. Yes, sir; filled them that high (indicating); what I mean by improving is something that absolutely does improve.

238 Q. State what you have done, if you have done anything on this island that is in dispute; have you ever built any building on there?

A. No, never built any building on that.

239 Q. Now, the present river bank, east of the river, south of Fulton street. You have estimated that to be about 500 feet from the west line of Waterloo street to the present water line?

A. Yes, about that.

240 Q. Of course now, that is the exact distance?

A. Oh! no; I mean it is more or less; I couldn't tell exactly.

241 Q. Now, how about the 300 feet of that south of Fulton street; have you ever done anything there?

A. Oh! yes.

242 Q. Ever built any buildings?

A. No, sir.

243 Q. Ever built any fences?

A. There is a fence there.

244 Q. Did you build it?

A. I didn't do it myself; no, sir.

245 Q. Didn't the railroad company build it?

A. No, sir.

246 Q. There is a fence there now nearly to the water's edge, is there not?

A. Yes, sir.

247 Q. How far is that fence west of the west line of Waterloo street?

A. How far does it extend?

248 Q. How far is the south line of the fence west of the west line of Waterloo street?

A. The northward part of the fence—the southward part of the fence ends towards the water. There is no south fence on the water.

249 Q. No north and south fence?

A. Yes, that is, the north and south fence is near the bank of my last improvement.

205 250 Q. How far is it from Waterloo street?

A. You mean the fence standing north and south?

251 Q. Is there a fence west of Waterloo street running north and south?

The COURT: On the west end of your lots?

A. My lot, according to my understanding, would be at the water's edge.

252 Q. Is there any fence west of Waterloo street running north and south?

A. Yes, sir.

253 Q. How far from the west line of Waterloo street is it?

A. It is to the westwardly part of the last improvement that I made.

254 Q. How far is it? Can you give me some idea as to how far it is from there?

A. Yes, it averages 240 or 225 feet, somewhere along in there; 225 or 240.

Mr. BUTTERFIELD: How many houses are there now standing on those premises built by you, Mr. Butler?

A. Well, there is only my residence that is built by me or caused to be built by me.

255 Q. How many other houses are there now, south of these premises?

A. Three, besides my residence. I think a half a block away there is one, a little further south.

256 Q. I call your attention to the last improvement which you made, which now stands 6 or 8 feet high there. How far have you filled in there from the west line of Waterloo street towards the river?

A. I have improved and filled in on an average a hundred feet, perhaps, plumb into and beyond that improvement I spoke of the other day.

257 Q. Above the high bank?

A. Yes, sir; above the high bank.

258 Q. As it now stands?

A. Yes, the bottom there is seeded all around.

258 Q. How near did the last hundred feet bring you to
206 the shore of the river as it now is?

A. In the neighborhood of a hundred or over a hundred feet.

260 Q. How was this first improvement which was made by you, which you now mention with reference to where the sand bar—the little sand bar which you speak of—is in there? Was it about over that or not?

A. A portion of it would be over it. The top dressing, like, would be like that sand bar that appeared there commonly in ordinary water; leveling up to about that.

261 Q. How has that been used by you? As a garden at any time?

A. Surely it has; yes, sir.

262 Q. When you first commenced to fill what you filled, state when you first put this filling on.

A. I commenced in March. I bought in March, and after the water went down from what I bought—it was under water a short time after I bought; and I think when I bought it there was no sand bar to be seen.

263 Q. Do you know when it was that you put in this first filling that you speak of on the top of the sand bar?

A. I don't recollect exactly; I suppose I could get it from the man I bought it from. It was after the water began to go down.

264 Q. In the first year that you went there?

A. Yes, the first year. I commenced, and it has kept that up ever since.

265 Q. Since that time?

A. Yes, sir.

Mr. CAMPBELL:

Q. How far would you call this sand bar west of the west line of Waterloo street?

A. Well, it was over three hundred feet, between three hundred and four hundred feet. The sand bar—its appearance was generally changing.

266 Q. Well, but its location was not changed?

A. Oh, the general location was not, but I mean the sand bar—the appearance; it would be this way today and another way tomorrow.

207 267 Q. On account of the rise and fall of the water?

A. Yes, sir.

268 Q. South of Fulton street, and some distance——

The WITNESS: Furthermore, excuse me, I would say it was on account of the water and on account of the rise of the sand bar itself. I don't know that the sand bar ever fell that I noticed, but it kept rising, and so did the rest of the ground.

269 Q. Now, you stated in your direct examination that, when you went there in 1870, there was hard land back from Waterloo street west, about 100 feet?

A. Yes, sir.

270 Q. Between Oaks and Fulton streets? That hard land ran back 100 feet from Waterloo street?

A. Yes, sir, about that.

271 Q. And west of that hundred feet of land there was no land visible until you reached the western bank of the river, way across?

A. I think about the time that I bought there was no land to be seen between the head of Island No. 3 and No. 2, near the jail.

272 Q. You locate the head of Island No. 3, do you, on a line with Oaks street?

A. I locate it northward.

273 Q. How far north?

A. Well, taking the lines of the Government survey, the line of Oaks street would be something over 200 feet.

274 Q. Part of it 200 feet north of Oaks street?

A. Oaks street; yes, sir.

275 Q. At that time, in 1870?

A. Yes, sir.

276 Q. That would be about equal to four lots in Bryan & Ball's subdivisions, so that there was 50 feet fronting on Waterloo street?

Now, that is your statement, then, that it came about 200 feet north of Oakes street?

A. Oh, well, that is an estimate, of course, without measurement; and this estimate is made on the basis of following the line of
208 Oakes street. The line is different. In the case of Waterloo street the line changes—the plat, I mean, made the line at right angles with the street.

277 Q. Fulton and Island and Oakes streets run east and west don't they, or nearly so?

A. I couldn't say that, exactly.

278 Q. I am asking you to locate the direction of the lines of Fulton, Island and Oakes streets?

A. Fulton, Island and Oakes streets?

279 Q. Yes.

A. Those lines, as I understand, are supposed to run according to the general survey of the Government.

280 Q. They are east and west, aren't they?

A. Yes, sir.

281 Q. The Government didn't survey those streets.

A. Well, whatever it is, according to the general understanding,

282 Q. Now, take the line of Oakes street and extend it directly west, the line following this general survey.

A. Yes, sir.

283 Q. On out into the river from the corner of Waterloo street; how far would that line strike from what you call the north line of Island 3, taking the north line of Oakes street.

A. How far would it be northward of the head?

284 Q. No; how far would it be from that head, north or south, or whatever it is, in fact?

A. The north line of Oakes street, as it is now?

285 Q. Produce that; extend it right in a direct line out into the river; where would it strike Island No. 3; how far from the head of it, and which way?

A. If I understand you, to follow the north line of Oakes street, you wish to know how far north of the Island—the head of Island No. 3—it would strike.

286 Q. No, I didn't say north. I say, extend a line on
209 Oakes street, as it is now; remember, extending the north line of Oakes street—first street above Louis there—extend that north line directly west?

A. Continue it?

287 Q. Yes, into the river.

A. Well, without having anything exact about it, I made my estimate by simply walking and looking and calculating from the center of Oakes street, it would strike it.

288 Q. Well, but where would the line strike?

A. It would strike on the island, I think.

289 Q. With reference to what you call the head of the island, how far?

A. No, I am not sure about that; I make my calculations simply by estimation, looking from the center of Oakes street; following

the line of Oakes street—following it right across the river, it would strike near that old friend—what we call the old friend, that big tree that stands there, that has been struck by lightning and jammed by logs and ice so much.

290 Q. North or south of the head of Island No. 3, as you call it?

A. Yes, sir.

291 Q. Well, which?

A. I don't know as I am capable of answering.

292 Q. Why, it is very plain. Do you know whether it would run north or south of what you — Island No. 3? You are familiar with Oakes street, are you not?

A. Yes; well, I have stated that Oakes street I supposed was in keeping with the general survey. Now, let me understand about this. I understand that Oakes street is laid out in keeping with the general survey; whether it is or not I don't swear to; I don't swear that it is absolutely north and south. I have understood it to be so, and my estimate is on that basis. Now, to follow the line of Oakes street as it is, it would strike nearly to the head of Island No. 3, but it would have to — north of Waterloo street over two hundred feet; that is my idea of it.

293 Q. You speak of the street as it is now traveled.

A. Yes.

210 294 Q. Now, running south of Fulton street to some distance on the present bank of the river, there is a depression, isn't there; land covered with willows south of Fulton street and some distance west, some distance east of the present east bank of the river?

A. Now, you will have to speak a little louder; my hearing is a little defective. Now, I want to understand distinctly how you put the question.

295 Q. I call your attention to the premises west of Waterloo street and back of these lots; as you would see it if you stood on the corner of Fulton-street bridge. Isn't there a depression in the grade some distance west of the east bank of the river on which some willows are growing?

A. A depression?

296 Q. Yes, a kind of a hollow?

A. I don't know.

297 Q. From the east bank of the river?

A. From the east bank of the river as it now is?

298 Q. Yes, sir; isn't there a depression lying some distance east of the east bank of the river as it now stands?

A. You want to know if there is anything or if there was anything?

299 Q. No, I am speaking of today.

A. Well, yes, there is, as I understand it.

300 Q. And there are large willows growing there?

A. Large willows.

301 Q. Now, which way was the sand-bar that you speak of from that depression?

A. The sand bar appeared along southward of that.

302 Q. Now, between this depression and the eastern bank of the river there is at present hard land, sodded, isn't there?

A. State that question again, please.

303 Q. West of this depression, south of Fulton street and east of the east bank of the river there is hard land under sod?

A. Somehow, I don't quite get your question.

211 304 Q. There is an east line of the river bank, isn't there, somewhere?

A. Yes, sir.

305 Q. And now you have already spoken of a depression?

A. There is a depression.

306 Q. Now, I don't mean just the exact line. There is what you would call the east and west bank there. Now, immediately south of the line of Fulton-street bridge and between the present easterly bank of the river and this depression that you have spoken of there is hard land, isn't there?

A. Yes, sir.

307 Q. Quite a strip of it, running to the south?

A. Yes, sir.

308 Q. And it is under sod, isn't it?

A. Why, yes.

309 Q. Now, have you ever done any work on that land west of that depression, commencing at the line of Fulton street and going south? South of the line of Fulton, west of the hollow, the last land there?

A. Oh, yes, sir.

310 Q. What have you done there?

A. Made a top dressing and sodded it down. When I got leveled up to it it continued to rise, but for the last two years it has got so high that water did not stay there, consequently did not fill up, and it will be seldom that it will fill up, because I have drawn it on.

311 Q. Do you say you ever drew any earth on to this piece we are speaking of west of this depression?

A. I do say I have.

312 Q. When?

A. I caused it to be done.

313 Q. When did you commence it?

A. I commenced it in the spring and forepart of the summer of 1870.

314 Q. When did you draw it on? How did you get onto the land with it?

A. I first got back and leveled up in the extreme dry time along in 1873, and then I filled along and filled along up as it kept rising; the sand bar kept changing very rapidly.

212 315 Q. Now, I want to speak only of the land between Oakes and Fulton streets lying west of this hollow or depression that you have spoken of. I want to know what you have done on that strip?

A. Well, the sand bar that commonly appeared there,—I have been assured that there is a depression; it is hard to distinguish; it may be a deep depression, and it may be very shallow.

316 Q. Between Oakes street and Fulton street, and west of this depression, I want to know what you have done in the way of filling, if anything?

Objected to, as having been already gone over.

317 Q. I want to call your attention to the land that now appears there on that easterly bank of the river between Fulton street and Oakes street and lying west of this hollow or depression that you have spoken of. I want to know what you have done in the way of filling on that part of the premises, if anything?

A. Well, between Oakes street and Fulton street and westwardly from Waterloo street.

318 Q. No, west of this depression?

A. Well, I have drawn on solid earth.

319 Q. How much; to what extent?

A. I couldn't tell you exactly; a great many hundred yards, perhaps in all 20,000.

320 Q. Where was it placed?

A. It was placed in that depression that you speak of. As long as the water stayed over there high, it floated in sawdust and every manner of rubbish, sticks and everything, and covered it up.

The COURT: What Mr. Campbell wants to know is, how much filling you made in the depression and how much top dressing you put over the ground there that has been sodded down.

A. I think I have answered that. It was generally called—everybody that spoke of it spoke of it as a sand bar, no grass growing over it.

321 Q. You say everybody you have talked with? Then,
213 you mean that every man that has talked about it claimed that it was a sand bar?

A. No, I don't say that. I meet a good many curious persons that have something to say about that. I don't mean to swear to any such thing.

322 Q. Now, I wish you would get one line of thought in your mind. Just think of the depression you have spoken of. Hasn't that willows growing on it some distance east of the present east bank of the river?

A. If there are willows growing in it?

323 Q. If there are, now. I am speaking of the condition of it. Now, I want to know what you have done in the way of hauling on earth and filling in, if anything, up to the hard land west of that depression?

A. Well, there is one willow that serves as a landmark that stood near the edge when the water was quite low, which stood near the edge of this sand bar and pretty well southward of what I own there. Now, I filled up to that willow.

324 Q. From which direction?

A. From the direction of Waterloo street westward, until I reached the bottom. Well, that is some 360 or 370 feet from Waterloo street, for instance. From my back porch every day for the past twenty years, during the time my house was built, I could look right out

and see the movements of those things, and see the old tree and the motion of the water, and now that bush, since I have been here and testified the other day, I have found that bush, and found where it had been killed off and partly buried; that bush was the only bush that I remember except a small bush that was a little further up. There would nothing grow further up; there was no substance in it. This depression you speak of ran eastward to what was the old channel.

325 Q. I want you to tell what filling you have done in the west of that hollow, and I will be satisfied.

The WITNESS: Now, you go on from where the sand bar was toward my residence or a little northward, and you strike
214 Mr. Meigs' place. He has been so kind he hasn't even spent anything there to make any improvement, and consequently nature says: "We will make these willows grow on that lot." There didn't any grow on mine. Since I have been down there and been improving mine, nature has been making an improvement on Mr. Meigs'. He is kind enough to let nature do it; saves him trouble. Well, now, here. Now, I can learn something from that, if you have no objection.

326 Q. Tell us what it has got to do with the filling you have done, and I will let you go on?

A. Anybody can see.

327 Q. What lot does Mr. Meigs occupy?

A. Northward of me exactly. He is pleased to see me fighting this for his benefit. Well, that is all right. Now, Mr. Meigs' property there is left as nature left it right along there; it is just as mine was or would have been if I had left it as he did. The first is filled up. Now, admitting—and it is generally conceded—that the east channel of the river was lower than the west—take westwardly of the sand bar, I have heard it said it is the common impression that this was the channel. I have stated that it was the lower part of the river. That is a mistaken idea——

328 Q. Now, let me ask you; you came in 1843?

A. I was here in 1845.

329 Q. What did you know about the condition of the river in 1836 and 1837? Did you know anything?

Objected to as immaterial and irrelevant.

A. Well, that is simply an opinion; I won't state that as a fact.

330 Q. Men who ran past on the river twenty years before you came to Grand Rapids ought to know more about it. Well, go head?

A. What I was trying to get at is, Mr. Meigs' land lay aside of mine northward—

Objected to as incompetent, irrelevant, and immaterial.

215 331 Q. Now, Mr. Butler, I think you might answer without any detail at all.

The COURT: What Mr. Campbell wants to know is what filling

you have done, how far your filling is extended on what he claims as Island No. 5.

Objected to as already gone over.

The COURT: As I understand, you want to know to what extent his filling is extended west of the hollow onto what you claim to be the island.

COUNSEL: No, anywhere west of it. I am taking this depression there that runs from Fulton street; whether he has ever done filling west of that depression.

The COURT: What he wants is whether you filled on the depression, on what they are claiming as Island No. 5, how far your improvements have gone on the solid land. You said you put a top dressing on. How far west did you go with it? How deep was it?

A. I thought I had stated that. Commencing at the foot of the river, east bed of the river, what would be the westerly line of the dry land when I bought, or near the time that I bought, from that point westward from 225 to 250 feet, more or less, to another line exactly on a line, and as near as you could make the statement, it is about from 225 to 250 feet. Now, the west part of that work was thinner as they got to the westward part of the old channel and reached the sand bar, and then it became thinner when it got pretty near to it.

332 Q. You never put any sod on there anywhere?

A. I put what made the sod.

333 Q. What was that?

A. Well, I seeded it down; made the dressing there.

334 Q. At what point on the premises did you make the dressing?

A. In the first place, I made a dressing and seeded it down.

335 Q. Now, if I understood you before, you have been
216 simply on the premises lying within the line 200 or 225 or 250 feet of the west line of the hard land as you found it; is that it?

A. 250 feet. I am not speaking of the west line of Waterloo street. I am speaking of what the hard land was when I bought the place.

336 Q. Is that the part that you filled in?

A. Yes, some 250 feet.

337 Q. You haven't done filling north of lot 5, have you?

A. North?

338 Q. Yes. You own 5, 6, 7, 8 and 9. Now, whatever filling you have done has been done within the line, and extended westwardly?

A. Yes, about that. Well, it is just as you would make an embankment, if you go to work and make an embankment, and your neighbor don't want to make one that way; maybe it would slump down onto it.

339 Q. Now, from Waterloo street, how far back on these premises, how many feet back has your filling extended? You put some filling in your lots, didn't you?

(Objected to as having been gone over.)

340 Q. Do you know where the depression is today on these premises that you have been talking about with the willows in?

A. As it now is?

341 Q. I am speaking only as it is now, as if you stood on Fulton-street bridge and looked down at it this morning.

A. As you get near Fulton street and near the bridge, it goes down right where the river bed was when I began to fill there.

342 Q. It runs to the southeast?

A. The depression ran south, yes; my line would be south of that; my property.

343 Q. South and east, isn't it?

A. The depression would be south and east from the end of the bridge, as you look at it.

344 Q. Have you ever filled any part of the depression?

A. Only on my own premises.

217 345 Q. Within the north and south boundary? When you commenced filling there you first filled your land?

A. Yes, sir.

346 Q. Within the 100-foot line back of Waterloo street? Now, you have gone on and filled here west of that?

A. Yes, sir.

347 Q. Have you ever filled that across the depression?

A. Running northward of that sand bar, you mean?

348 Q. The east bank of the river is hard land, isn't it, sodded?

A. From the bridge?

349 Q. Yes, south of the bridge. Now, there is a depression and lower ground some distance east of that hard land; I want to know if you have ever done any filling west of that depression?

A. As the depression was?

350 Q. As it is today, as we see it now. Well, do you know anybody else that ever filled there?

A. There is a couple of old ladies living there; they have been putting things in.

351 Q. It isn't that hard land, is it?

A. Well, it is made of that hard stuff. Mine is clean earth. I suppose they were paid something to allow it to be there.

352 Q. At what point?

A. Southward from my premises.

353 Q. South?

A. Yes, sir.

354 Q. Away some distance south of Fulton street and extending back west from Waterloo street, there is a very high bank of filling, isn't there, south of your line?

A. South of my lots? I call that the dumping grounds; that has been there for several years.

354½ Q. Who did that?

A. I say——

355 Q. You didn't do it?

A. I? No, sir. I wouldn't be guilty of such a thing as that. One

of the old ladies that owns this land adjoining me—her name is Leets, and next is her sister, and her name is Ashford; that is on the south of me.

218 356 Q. Please come back again, now, and say whether you at any time have ever done any filling west of this depression that you see on that ground there today; that is the question, and nothing else.

A. I can answer that by saying this; I have answered it a dozen times; I surely have done so.

357 Q. How far west of it? How much have you drawn on west of that depression?

A. Now, it seems to me that I have answered that also. Well, I will answer it again. Taking it from Waterloo street——

COUNSEL: I don't see that you need to go back to Waterloo street.

WITNESS: Well, it was about—now, this is an estimate, understand; the hard land when I bought—what we call the hard land would be under water, and when it went down it would dry off about a hundred feet. Now, west of that I filled.

358 Q. How far?

A. It would be in the neighborhood of 150 feet.

359 Q. Well, that is enough for the present.

WITNESS: No, now wait; I said 150 feet, I mean 250 feet; that is simply a mistake.

MR. BUTTERFIELD: Mr. Butler, when you went there, some time in the first year you went there, there appeared the sand bar back of your premises, or part of them. How far was the west line, if you know, of that sand bar east of what is now the east line of Grand river?

A. Well, when the water went down it would come very near what is the east line now.

360 Q. When the water was low between what appeared to be the east line of the sand bar and the west line of the river channel back of your house, what was the width of the water between the east line of the sand bar—that is, the east side, the side this way (indicating) and the east shore of the channel?

A. Just ask that over again.

219 361 Q. Between the east shore of the little sand bar?

A. East shore?

362 Q. Of the little sand bar and the east shore proper, what was the width of the water?

A. When the sand bar appeared?

363 Q. The east shore proper of Grand river?

—. At that time?

364 Q. I am calling your attention to when this sand bar appeared in low water?

A. The east part of the sand bar to the east shore of Grand river as it appeared the year I first became acquainted with it?

365 Q. In low water when you saw the sand bar.

A. Well, I don't really mean to be understood that I saw the sand bar before I bought.

366 Q. Well, I know, but I am calling your attention to the first time you saw it after you bought it?

A. Well, when the water went down there was about this distance I have stated; 250 or 260 feet, something like that.

367 Q. Do you mean to say that from the east line of that sand bar—not the west line, but the east line—from the east line to the east line of the shore would be how many feet?

A. The sand bar appearing, when I first began to notice it?

368 Q. Yes. What was the distance from the east shore to the east side of that sand bar? It was the old steamboat channel, wasn't it?

A. Well, at a low point of water there was no channel there at all. Simply dead water, all that came in there.

369 Q. What was the width of that dead water?

A. Now, to answer a question like that—we are taking from the east shore of that sand bar to the westwardly shore of the river as it was when I bought there. That is the way you mean? Do you mean to the westwardly shore?

370 Q. No, the east side?

A It would be the east side of the river and west of me?

220 371 Q. Yes, sir.

A. The east part of the river? Well, the east part of the river, calling my hard land as I bought it in low time there would be over 200 feet, 225 to 250, along there, somewhere.

372 Q. What would be the character of the water? How deep would it be?

A. Oh! the water never stayed there, it evaporated. That is the only way it had to get away after it had come in. Consequently that is the way it filled up.

373 Q. Dead water?

A. Yes, and a green scum on it.

374 Q. Stopped from going out below by this depression here across the channel?

A. And the improvements they made in the river here The entire water-course circled, as I have stated the other day; the current on the east side would be northward.

WITNESS: Now, I would like to state, if it is proper for a witness to state—I tried not to be a witness in this case here at all——

Mr. CAMPBELL: Oh! well, never mind that.

374½ Q. Now, is there any depression in your land in the back part of this land that you recollect?

A. Now?

375 Q. Yes, now?

A. No, sir.

376 Q. No depression back of your land as you recollect?

A. No.

377 Q. Where is that depression?

A. It would be northward of Mr. Meigs' land; that depression is there, and that is what I wish to state, that Mr. Meigs'—the bottom

of his land, that island, after leaving him 100 feet has filled up since I have been improving there about six or seven feet.

378 Q. I want to ask you if that depression that is part on your land and that is part of Meigs' land—how far does that filling extend beyond the west line of that depression as it appears on Meigs' land—back or behind where the main line of the depression
221 leaves Meigs' land—tell me how far that filling extends west of it?

A. As the line runs back from that depression—nearer the end of it—north end of the sand bar, consequently he would have to go to get to it a little further than I would.

379 Q. In other words, the channel turned to the east a little as it went south.

A. What channel?

380 Q. This depression turned to the east and ran south; went south, did it not?

A. Oh! yes.

381 Q. So that the western bank of the depression would be further to the east on your land, is that it?

A. No; if you calculate north of me—if you go far enough there would be no depression—no sand bar appeared westwardly. Mr. Meigs' was nearer that point than mine; that would be the higher portion of that that appeared, as the sand bar there was mostly back of my residence.

382 Q. Are you able to tell then, from anything that now appears there, how far you filled west of that west bank of that depression?

A. The west bank of the depression?

383 Q. The west edge of the depression; how far you went beyond in filling; the further side of that depression from you.

A. I don't know whether I understand that. Now, there is that bush there——

384 Q. Now, let me ask you another question. If that depression is not entirely filled and obliterated on that land, state whether or not in filling your land—you are now able to state how far beyond the line of the depression, as it was on your land before it was filled, you went; how far did you go over towards the center of the river beyond the west line of that depression?

A. Well, I could not say exactly. In fact, it don't quite seem as if I understood.

The COURT: I think you had better let the subject pass.

WITNESS: I can't tell how far back I improved.

(Mr. CAMPBELL:)

385 Q. I want to know about the way you made this fill-
222 ing. Where was the earth drawn from; different places around the city?

A. Different places.

386 Q. On your premises?

A. Yes, sir.

387 Q. How did you draw it from the places that you did draw it from? From Waterloo street on your lot and back to the west?
A. Yes, sir.
388 Q. Did you have to drive across anybody's property?
A. No, sir,
389 Q. Whatever you have done was by entering on your own lot from Waterloo street and filling back to the west?
A. Yes.

Plaintiff's counsel offers in evidence field-notes of the surveys of section- 25 and 36, township 7, north range 12.

Said papers are marked "Plaintiff's Exhibit A."

Plaintiff's counsel then read in evidence deposition of Capt. Ebenezer W. Barns, of date July 11th, 1889.

At this point the plaintiffs rest-.

The defendant, to maintain the issues on its part, then introduced the following evidence:

Defendant's counsel offers in evidence copy of survey and field-notes certified by the Commissioner of the General Land Office of the United States, May 1st, 1888. Notes of the meanders of the Grand river upstream on the left bank and other matters.

Said copy is marked "Defendant's Exhibit A."

Objected to on the ground that said copy is merely an extract from the field-notes, and as irrelevant and immaterial.

Defendant's counsel also offers in evidence the four maps attached together, certified by the Commissioner of the General Land Office of the United States under date of May 18th, 1888. Photolithograph of township 7 north, range 12 west, in Michigan. Also map of the southeast fraction of township No. 7, east of the river. Also
223 plat of the same part of the township. Also map and notes of the survey of Island No. 5 in the Grand river. Said survey made in 1855.

All of which is marked "Defendant's Exhibit B."

Plaintiff's counsel objects to the same as irrelevant and immaterial.

Defendant's counsel also offers in evidence certified map of the survey of Island No. 5, certified by the commissioner of the land office of the State of Michigan under the seal of office the 15th day of August, 1873.

Said paper is marked "Defendant's Exhibit C."

Plaintiff's counsel objects to the same as incompetent, irrelevant and immaterial, no authority being shown for making the survey; and further, that it does not appear that at the time of making the survey the land belonged to the United States.

Said paper is marked Exhibit No. 3.

RANSOM C. LUCE, sworn on behalf of the defendant.

Examined by Mr. CAMPBELL:

1 Q. You reside in the city of Grand Rapids?
A. Yes, sir.
2 Q. How long have you lived here?

A. Forty-eight years the 5th of August.

3 Q. That brought you here in 1842?

A. Yes, sir.

4 Q. Are you familiar with the locality in Grand Rapids lying on the present east bank of the Grand river and between Fulton street and the line of Oak street extended west?

A. I am familiar with it, yes, sir.

5 Q. Do you know the premises described as the Bryan & Ball subdivision of the Kent plat?

A. Yes, sir.

6 Q. State whether or not when you came here in 1842 you went to that part of the river, that bank of the river.

A. Yes, sir.

7 Q. How soon after you came here?

A. Well, pretty soon after I came here.

224 8 Q. State whether at — time there were any islands in the Grand river between, say, the present line of Crescent avenue and Wealthy avenue, or below Crescent avenue?

A. Yes, sir.

9 Q. Along in there in the river, just below that point?

A. Let us see. There was this island over here and one below the warehouse and Holmes island and Robarg island and Island No. 4, four islands.

10 Q. Where do you locate the head of Island No. 3, of the Holmes island, the large island?

A. Opposite the warehouse, now, the present warehouse.

11 Q. How far did that extend north?

A. The island?

12 Q. Yes.

A. Well, about as far as the north side of Oak street, I should judge.

13 Q. Now, between the north end of the island as it before existed and the present line of Fulton street, state whether or not there was any ground or island in the river?

A. Yes, sir, there was an island.

14 Q. Has that been designated since by any name or number?

A. Well, we used to call it No. 2; I don't know anything about any change; I don't know anything about the numbers of them.

15 Q. Have you ever known the premises described as Island No. 5?

A. No, I have never known any Island No. 5, by that number.

16 Q. State whether or not between this Holmes island and Island No. 3 there was any—the Holmes island was Island No. 3. This long Island No. 3 is there yet?

A. Yes, sir.

17 Q. How far north did this island—the line north of that extend with reference to the present line of Fulton street?

A. How far north did it extend?

18 Q. Yes.

A. The island north of what we call Holmes island now.

19 Q. Yes.

225 A. It ran up near Fulton street; there was a space of about a hundred feet or a hundred and fifty feet, or such a matter; it has been quite awhile, and I cannot recollect exactly.

20 Q. Have you been on the premises lately, or how long since you have been down there?

A. I passed there the other day.

21 Q. Have you noticed the east bank of the river now below Fulton street, between that and Oak street? Did you cross Fulton-street bridge.

A. Yes, sir.

22 Q. There is a bank of the river there and some hard land, isn't there?

A. I think there is a small patch, if it has not been graded, lying north of Fulton.

23 Q. Now, state what channel there was, if any, between this head of Holmes island and islands heading north of it?

A. The boats used to go through there.

24 Q. No; between the two islands. I don't mean the island and the bank of the river; I mean between the islands.

A. There was a stream of water always running there.

25 Q. What was the width in ordinary times of water?

A. That is pretty hard to tell.

26 Q. Well, as near as you can recollect it, when you first saw it.

A. Well, it might be 30 or 40 feet; it used to fill up in high water, and as it receded it would wash out and make it shallower.

27 Q. Did you ever cross there on the ferry?

A. Fulton-street ferry?

28 Q. Yes, sir; that used to run crossways of the river?

A. Oh, hundreds of times; yes, sir.

29 Q. When did you commence crossing? How soon after you got here was it running?

A. Yes, sir; I used to cross quite often; I used to go over there; I had a sick brother and used to go over there for him; I used to cross there.

226 30 Q. When did you commence crossing first? How soon after you got here was it running?

A. Yes, sir; I used to cross quite often for him.

31 Q. Have you ever been onto this island?

A. Yes, sir.

32 Q. The one lying north of Holmes island?

A. Yes, sir.

33 Q. When did you first go on there?

A. Well, that is pretty hard to tell.

34 Q. With reference to the time that you came here, how long after you arrived in Grand Rapids was it that you first visited it?

A. I think it was five or six years after I came here when we went over there to catch some pigeons one night with a lantern.

35 Q. That was the first time? What was the condition of that island, whether it was hard land or not? Was there anything growing on it?

A. It was covered with solid underbrush. Pigeons used to come there and roost.

36 Q. Any trees on the island?

A. A few large trees; yes, sir.

37 Q. Of what kind?

A. I think they were mostly maples and elms; that is all there was, maples and elms.

38 Q. Have you been *done* there and identified the place and the trees lately?

A. I have noticed that, and I have been by there; yes, sir.

39 Q. How many are there standing there today?

A. I think there is three.

40 Q. Have you noticed those there from time to time, since 1842, since you came here?

A. Yes, sir.

41 Q. Did you notice a channel? Have you been down there with a view to locating the old channel between the two islands when you have been on the ground lately?

A. No, sir.

42 Q. Was there a steamer running on the Grand river when you came here?

A. Yes, sir.

43 Q. State where the landing or dock of that steamer
227 used to be.

A. When I came here it used to come up this side of Fulton street, where the Barnard house is, about.

44 Q. In going down the river and coming up from the dock, state what channel in the river the steamer would follow.

A. It used to run in the channel between Waterloo street and this island north of Holmes island; the main channel was east of the islands, between Waterloo street and this other street.

45 Q. And how far do you think the smaller island north of the Holmes island extended north to the line of Fulton street as at present?

A. Well, I should think it might have been a hundred feet; that is pretty hard to tell. That is my recollection.

46 Q. Which way, north or south of Fulton street?

A. South, I think it would be.

47 Q. How wide was the channel between that island and the east bank, the bank east of it, the hard land east of the bank, about the width at that time?

The COURT: Which island do you say, the one north of it?

48 Q. The one north of it; the little island, I mean.

The WITNESS: The one I think you are referring to I would call No. 2.

49 Q. Just look at this map (handing same to witness.) Now, I mean this island here (indicating.)

Objected to, for the reason that it is not a map of the premises at the time of which the witness is testifying; that it is not a map which appears to be a correct statement of the condition of the river at that time.

50 Q. I call your attention to the part of that map there that is marked "ferry."

A. Yes, sir.

51 Q. And the island just south of that?

A. The island coming up near the ferry, sometimes there would be a little sand bar when the river receded, as it is in all rivers, if it receded it would push down. There would be a little sand bar there, and as it went down it would push the sand out.

228 52 Q. Where was the Robarg island?

A. Right south of that.

53 Q. Further down?

A. Yes, sir.

Mr. BUTTERFIELD: What is the width of that east channel between the little island and the east bank?

A. I should judge over a hundred feet—the width of it; it may have been that and it may have been more or less in some places.

Court took a recess till 2 o'clock p. m.

GRAND RAPIDS, MICH., *April* 30—2 o'clock p. m.

DORR SKEELS sworn on behalf of the defense.

Examined by Mr. CAMPBELL:

1 Q. You reside in the city of Grand Rapids?

A. Yes, sir.

2 Q. You have lived here how many years?

A. Eighteen years about.

3 Q. What is your occupation?

A. Land surveying.

4 Q. How long have you followed that?

A. Thirty-five years.

5 Q. Are you familiar with the premises in the city of Grand Rapids known as Island No. 5 in the Grand river?

A. I know where it is or purports to be, yes, sir.

6 Q. Between Fulton and the line of Oak street on the east side of the river?

A. Yes, sir.

7 Q. Have you had at any time the field-notes of the survey of the island by Government survey in your possession?

A. Yes, sir.

8 Q. Have you made a map of the survey of the island from those field-notes?

A. I have; yes, sir.

9 Q. I show you this map purporting to show both lines of the Grand river and Island No. 5 and island below. State by whom that was made, if you know.

A. It was made in my office.

10 Q. Who furnished the data for it?

A. The survey that I made, the retracting of the old survey.

229 11 Q. What did you use in making the retracing?

A. Used the notes from the Government survey. I had a

copy of the notes from the land office at Lansing also furnished me by Mr. O'Brien from Washington.

12 Q. State whether you recognize this as the copy furnished by Mr. O'Brien.

A. Yes, sir; that is the same copy that we had.

13 Q. State whether or not this map drawn by you of this bank of the river and island is correct, according to those field-notes?

A. Yes, sir; it is.

14 Q. State whether or not you have recently visited the ground, and run the lines of this Island 5 according to these field-notes on the lines as they exist today?

A. I have; yes, sir.

15 Q. When did you do that?

A. Yesterday afternoon.

16 Q. Will you look at this paper, Defendant's Exhibit 5, and state whether or not that correctly represents the lines of that island according to the survey as they run today, as they are found today on the ground?

A. It does; yes, sir.

17 Q. I call your attention to this place marked Fulton-street bridge; is that correctly located?

A. Yes, sir.

18 Q. And those three trees, oak and elm and willow?

A. Yes, sir.

19 Q. And then this cluster of willows towards the north and south there?

A. Yes, sir; that is right.

(Defendant's counsel offers said maps in evidence, which are marked Exhibits 4 and 5.)

Cross-examination by Mr. BUTTERFIELD:

20 Q. Who made this plat?

A. It was made in my office.

21 Q. I asked you who made it.

A. Mr.—let me look at it and I will tell you; it was traced from the map that I had made; the work was done by Mr. Green.

230 22 Q. Traced from a map that you had made?

A. Yes, sir.

23 Q. How long ago since you had that made?

A. I think it was last fall.

24 Q. Have you compared the two with anybody, this tracing and the map?

A. Yes, sir.

25 Q. Have you compared it?

A. I have compared it.

26 Q. How, reading the description, or putting it over the original matter?

A. Putting it over the original matter.

27 Q. This is not a map of your survey, but a tracing made from it?

A. Tracing made from the survey.

28 Q. Does this contain all that was on the original tracing?

A. No, sir; it does not.

29 Q. Does it contain anything that is not on the original tracing?

A. Some of the things on the west side of the river, shown on the original tracing, are not here.

30 Q. By whose order did you leave off anything from the original tracing?

A. I think Mr. O'Brien stated what he wanted put on.

31 Q. And what he wanted put off?

A. Yes, sir.

32 Q. So this is not a copy of the survey made by you?

A. The east bank of the river; it is a copy of the east bank of the river, and of what is known as Island No. 5.

33 Q. Now, when you traced this head of Island No. 5, did you ever trace them by Lansing notes?

A. I think so.

34 Q. Is there any difference?

A. I don't remember now if there is any difference.

35 Q. How came you to make this plat by the United States notes, by the copies from Washington?

A. On the suggestion of Mr. O'Brien.

36 Q. He requested you to make a certain part of the field-notes from Washington?

A. Yes, sir.

37 Q. Do you know where the field-notes are properly placed?

A. We got ours from Lansing, in this State.

231 38 Q. As a matter of fact that is the place where the originals of the field-notes of the United States survey for this State are kept, is it not?

A. I so understand it.

39 Q. Have you ever compared this with the field-notes at Lansing to see whether it is correct or not? Do you know whether they agree or not? I will ask you that question.

A. There is some points that they don't agree. If I remember right, though, that is not material to this case.

40 Q. No, I ask you if the notes from which you made this map and the notes as they were filed in Lansing, agree?

A. My recollection is that they do.

41 Q. That they do agree?

A. I think they do. I don't remember now, but my recollection is that they do. I would not be positive about it.

42 Q. Don't you know as a matter of fact that they don't agree?

A. I don't recollect.

Objected to as incompetent.

43 Q. That land from Fulton street south, and from Fulton street

north, for that matter, clear down to the head of Island No. 3 as you have mapped it, is all dry land now, isn't it?

A. Yes, it is dry land.

44 Q. Are there any monuments that you found in making the survey of Island No. 3? Any monuments?

A. Not lately.

45 Q. You did not on this survey last fall find any monuments—any monuments of survey?

A. Nothing only the meandering corner.

46 Q. Where was that?

A. On the south line of this section on the east side of the river.

47 Q. On what street as it now stands?

A. On Wealthy avenue.

48 Q. In surveying this where did you start in from?

A. From that point.

49 Q. From Wealthy avenue?

A. Yes, sir.

232 50 Q. Is that the only distance given?

A. That is the only point really, or only monuments that I know of that is left.

51 Q. Are you able to determine where the quarter line of the section line is now?

A. In the center of Fulton street, we call that the quarter line.

52 Q. Taking the map will inform me—the linen plat No. 4—will you tell me how far south the end of Island No. 5 you make by your survey by that above the north end of Island No. 3; how many feet?

A. I cannot tell you from that.

53 Q. Now, as to getting the south end of Island 3, how did you get it?

A. I did not get it during this survey. Island No. 3 is platted there as it is there. The lower island was run in there from the field-notes; not any survey of mine. The survey I made, or that that map shows, is the east side of Grand river, Island No. 5.

54 Q. East side of Grand river and Island 5, you did not survey here at all then?

A. No, sir.

55 Q. So, as far as this survey shows, it don't show the location of No. 3 and its position?

A. Not from my survey.

56 Q. When you reached this Island 5, where did you start from?

A. That quarter line running west, known as Fulton street, intersects the head of Island 5.

57 Q. How did you find that?

A. Measured down from West Division street, and we had the point at Ellsworth avenue, that we had measured from Division street; from there we measured on until we got the distance given in the Government survey.

58 Q. Does the west shore represent the lines drawn by the minutes?

A. No, sir.

59 Q. Then, that is not a survey of Island No. 5 as it is at present?
A. Just around as far as we got in there without running into the river.
233 60 Q. Well, then, it is not a survey of Island 5, is it?
A. A survey of the south side of it.
61 Q. A survey of the southeast side of it, is that it?
A. East and south.
62 Q. Why didn't you go on to the other side?
A. That would take us into the river.
63 Q. How far?
A. Well, into the water so that it would interfere with the working.
64 Q. How far, about?
A From five to ten or fifteen feet.
65 Q. Now, when you got back to that point, which is the southern point of Island 5, just describe the land there which the line passes, as you have drawn it there?
A. The line, with the exception of the west end, is on dry ground; the west end goes into the soft ground on the bank of the river.
66 Q. That is the west end. You stopped where this dotted line comes; you didn't try to run that line?
A. No, sir.
67 Q. And the west end of this southern side, as you represented it, runs how far into the soft land?
A. I should say twenty feet.
68 Q. How far does that south line as it at present stands run from the trees that are standing there?
A. It does not run south. It is about—I think the line would strike the bridge, it is so close.
69 Q. You have marked in there two trees, oak and elm. What are those?
A. That is not on the island. On the west of the east line of the island.
70 Q. West of the east line of the island. How far from the shore?
A. Oh, I should judge it was—I have not measured it—I should judge it was about one hundred feet from the east side.
71 Q. How large are they?
A. Oh, the oak is thirty inches or three feet through.
234 72 Q. A living tree?
A. Yes, sir.
73 Q. And how about the elm?
A. About twenty inches, a living tree.
74 Q. How far south of that oak which you are now describing, is it to the south end of what you call Island No. 5?
A. 250 or 300 feet, to guess at it.
75 Q. What is the character of that land between that oak and the point where your survey shows the south side of the island?
A. Hard land.
76 Q. And how is it beyond the low land?

A. Oh! it is lowish ground; it is above the water; what you call river bottom.

77 Q. How far does that river bottom extend?

A. Down to this land here it is very uneven, rolling; it is what you call river bottom.

78 Q. How far does that extend south?

A. I guess about 400 feet.

79 Q. Then what comes?

A. Then it goes into a run.

80 Q. Do you know where there is an old channel there?

A. Yes, sir.

81 Q. How far does this island go north to the old channel, the south side of this island?

A. I should judge about seventy-five or one hundred feet.

82 Q. North of it?

A. Yes, that is rather guess-work; I have not measured, but as near as I can remember from looking at it, it is about that.

83 Q. What is the land south of the old channel?

A. South of it?

84 Q. Yes?

A. Well, that is what you would call dry land.

85 Q. Well, is it land that has been made there lately, or land that has always been above water?

A. It has always been covered with timber.

235 86 Q. There is no trees at all between that south line, as you have measured it, and the north line of that channel?

A. No, sir, no timber.

87 Q. Is there any trees in the channel immediately south of the south line of the island as you stepped it out or measured it?

A. There is none.

88 Q. What made you stop there?

A. Here we were tracing up these field-notes; that is where they stopped.

89 Q. In other words, you found a comparative level piece of ground like a field, didn't you?

A. Yes, sir; only where it had been filled in.

90 Q. And you simply measured it without a single natural boundary indication to assist you in measurements on the east side of what is called Island 5?

A. Yes, sir.

91 Q. Now, do you know how far that brings the south end of Island 5 above what is known as Island 3?

A. I don't know; I could not say that for certain.

92 Q. Well, what is your best judgment?

A. I don't like to say, because I did not give it any attention.

93 Q. What is the scale in which this map is drawn?

A. A chain to the inch?

94 Q. Do you know that?

A. Yes, sir.

95 Q. Did you make this map?

A. That is made in the office, I dictated it.

96 Q. Who made it?

A. Mr. Green, one of the gentlemen that we——

97 Q. Did you measure it up and see if it was correct?

A. Yes, sir.

98 Q. Now, I see that by the line of Island 5, as you have measured it, it does not lay next to the old channel bed at all, does it?

A. No, sir; it does not lay on the channel bed, but right alongside of it.

99 Q. How far west of the channel does Island No. 5, as you have it, lie?

A. About fifty or sixty feet, I should judge.

100 Q. West of the old channel?

A. Yes, sir.

236 101 Q. The old channel is perfectly plain there, isn't it?

A. Yes, sir.

102 Q. You can see where the river used to run?

A. Yes, sir.

103 Q. What can you say from your knowledge as a surveyor whether the minutes of that Island No. 5 represent a survey, or whether it is correctly traced?

A. It is impossible, in my opinion, to reproduce and find the exact line that was made or traced by the surveyor that surveyed it first.

104 Q. Why?

A. Well, there is a sort of carelessness or recklessness in that kind of surveying, and we cannot follow it down; they are mostly rather misleading.

105 Q. And you can't tell from the survey exactly where the survey meant you should go; is that it? You have to sort of form a judgment of it?

A. Well, I don't say I can form a judgment as to where he calculated to have us go, but I say it is impossible from any data that we have, to find what the line is on it as he should want it.

106 Q. You have been acquainted with or near the river bottom, have you not?

A. Yes, sir.

107 Q. You know the lay of the land there? How much of that has been formed which you now call Island No. 5? How long have you been here?

A. About eighteen years.

108 Q. How much of that has been formed; tell us your recollection?

A. By natural formation?

109 Q. Yes, sir.

A. I cannot say exactly.

110 Q. A good deal of it, hasn't it?

A. Yes, the south end seems to have been formed.

111 Q. Wasn't it the north end?

A. I cannot say as to that. I think the railroad went into there about the time I came here.

Mr. BUTTERFIELD: We object to these plats as irrelevant, immaterial and incompetent.

237 112 Q. Did you ever make that plat, Mr. Skeels, or was it made in your office?

A. That was made in our office when it was known as Coffinbury & Skeels.

113 Q. Did you make the survey on which that was made?

A. Yes, sir.

114 Q. And this plat was made the same as the other—this Exhibit No. 5?

A. Yes, sir.

Mr. CAMPBELL: Now, these trees that appear there, the trees furthest north, standing on the dry land, about how old are those trees?

A. I could not tell you that.

115 Q. What is the size of them?

A. Well, from three feet to two feet and six inches.

116 Q. How long would it take such a tree as that to grow to their present size, do you know?

A. I do not know.

117 Q. They would not have grown to that size since 1870 or 1873, would they?

A. No, sir.

118 Q. How long have you known these premises down here?

A. About sixteen or seventeen years.

119 Q. You first went down to them along in 1873?

A. Yes, sir.

120 Q. How was the hard land there and these trees at that time when you first saw them?

A. There was no material difference from what they are now.

121 Q. Running from Fulton street south?

A. Yes, sir.

122 Q. Now, you speak of some difficulty in running lines according to the survey, the surveyor's survey? Will you explain that, please? You mean locating them on the ground?

A. Yes, sir.

123 Q. You mean finding marks, it was so changed that it was difficult to find them?

A. Yes, sir; we found no monuments on the island when work was done with a magnetic needle; there is so many buildings and so much matter I see it is impossible almost to locate the same

238 point, starting from the same starting point. It is almost impossible to do so.

124 Q. With a perfect instrument and perfect conditions, how near would you go to the line shown on that survey of 1885, as they are defined by that surveyor?

A. I don't claim there was any difference; still, I say in my judgment, I don't think we are the same. We may be just the same.

125 Q. You would not want to swear to it as an absolute certainty?

A. No, sir.

126 Q. You took the same starting point, as near as you could?
A. Yes, sir.
127 Q. And on this No. 4 you did not run west of the line of the island; that is, the river line?
A. The river line? No, sir.
128 Q. That is indicated by the straight line commencing over north of Fulton street and running southwesterly and then west to the dotted line; that is, the line you retraced?
A. Yes, sir.
129 Q. And this westerly line of the island you didn't try to get.
A. No, sir.
130 Q. Now, the old channel up there, you say there is some distance between that now and this line drawn here?
A. Yes, sir.
131 Q. How do you identify the old channel bed; by any marks on the ground?
A. There is nothing only an excavation that was there.
132 Q. A depression there, and you took it as the old channel bed?
A. Yes, sir.
133 Q. Could you tell the channel if extended further east than that?
A. No, sir.
134 Q. Might it not have run up about to the east line of the island and then filled in?

Objected to as leading.

239 135 Q. You take the depression that is there today—is the channel bed marked here?
A. Yes, sir.
136 Q. What is the highest point of this Island No. 5 as marked there?
A. About where the oak tree stands, I should think that is about as high as anywhere; it has not been filled in here.
137 Q. Where is the filling, the artificial, if any, with reference to this island?
A. Along there—about there, down to here, (indicating.)
138 Q. Is there any fence there now?
A. Yes, sir.
139 Q. You have not marked those?
A. No, sir.
Mr. BUTTERFIELD: What is the width of this old channel on the north of that strip? It would be about seventy-five feet, would it not?
A. About fifty feet, not more than fifty feet.
140 Q. How far does it lie west of the original bank? You can show that there, can't you?
A. I have not noticed about that.
141 Q. What is the character of the rest of this island north of the elm tree, what is the character of it?
A. There is not much difference; it is level.

142 Q. Is any mud or river deposit north of the tree?
A. There appears to be; yes, sir.
143 Q. Which would be the oldest part of the island in your judgment? Is there anything to show?
A. Nothing only judging from the timbers.
144 Q. Now the whole of the island is covered by filling in some parts?
A. Yes, sir.
145 Q. Has it been filled up all over it?
A. North of the tree.
146 Q. The elm tree?
A. Yes, sir.
147 Q. How far does that filling extend?—you marked a place "Willows." This was on Arthur Meigs' land, was it not?
A. It was south of Fulton street, just east of this line here.
240 148 Q. And north of—do you know where Butler's land is?
A. I know where his house is.
149 Q. It is about north of here, isn't it?
A. Yes, sir, a line produced west, it would be just north.
150 Q, How far is it filled over to that line?
A. Well, you can comfortably walk between the filling and the water.
151 Q. It is clear up to the river, as you have it here?
A. Yes, sir.
152 Q. At what point do you mean?
A. Just following the line, it would be about there, filled out down here (indicating).
153 Q. Where was the filling done?
A. There is filling now there.
154 Q. In recent years?
A. Yes, sir.
155 Q. There is no way of crossing from this island to Fulton street on this point?
A. No, sir.
156 Q. Did you notice the filling on Mr. Butler's land? Do you know where his five lots are?
A. No, sir; I know where his house is, a line running back at right angles to Waterloo street.
157 Q. Doesn't this depression run clear down here?
A. No, sir; it is filled; there is some filling in there.
158 Q. How much?
A. Five or six feet.
159 Q. How far back? Did you make any examination of it?
A. No, I did not.
160 Q. How do you know it is filled? All this is covered with sod.

Objected to as cross-examination of his own witness.

161 Q. What part of that island is covered with sod, if any? Isn't the whole east side of this island, as shown here from Fulton

street down below this Oak street? Isn't it covered with sod down below Oak street? Isn't it covered with sod?

Objected to as cross-examination and as leading.

A. Not the east side; the west side is.

241 162 Q. Well, then, the west side.

A. Yes, sir.

163 Q. And that goes in how far?

A. About the center of the island there is a strip only twenty or twenty-five feet wide, and then at the lower end it is all sod; and at the north end, just below where the willows are, it is all sod until you get to the bank of the river.

164 Q. Where did the old railroad bridge run, do you remember, with reference to this Fulton-street bridge?

A. When I said the railroad bridge a few minutes ago I meant the Fulton-street bridge.

165 Q. So this part here east and southeast of the willows is covered with sod?

A. Yes, sir.

166 Q. And this south part, around on Oak street too?

A. Yes, sir.

Mr. BUTTERFIELD: Back and at the south line of the willows, how far did you find, and at the south line of the willows, how far did you find filling west of what professes to be the east line of the island as surveyed by you? How far did it extend?

A. You mean all that artificial filling?

167 Q. Yes, sir.

A. It don't come quite to this, just down——

168 Q. How many feet below there does it come?

A. The willow is about—this point is——

169 Q. How many feet from Fulton street before the filling passes onto the island? Calling your attention to the north line of the land occupied by Mr. Butler's house, doesn't that filling commence there?

A. Yes, sir; it commences about the north line.

170 Q. Now, how far does the filling, where it commences, extend over to that line west of that mark which you made?

A. That filling comes out on a little above this line and that goes out across—almost across the island; another filling.

171 Q. How far does it come down to this second filling, about?

A. Sixty feet, about, I should judge.

242 172 Q. This filling that you refer to as coming out a little west of the east line as you marked it is the highest where it is up six or eight feet?

A. Yes, sir.

Mr. CAMPBELL: Whose property is that on?

A. I don't know; I judge it is on Mr. Butler's property.

173 Q. Did you measure it back of the lots?

A. No, sir.

174 Q. Isn't it south of Butler's?

A. I could not state; it is south of the house, but I don't know whether it is south of the property.

175 Q. What was this filling placed in, or whatever was placed on this island, what was it filled onto?

A. On the island proper.

175½ Q. And this long strip of filling runs out west of what you call here the east line of the island?

A. It runs nearly across the island.

176 Q. Is it very plainly marked?

A. Very.

177 Q. Is there a high bank to that strip that extends away out that way?

A. Yes, sir.

178 Q. And around that there is hard land there under sod, isn't there?

A. Yes, sir.

Objected to as leading.

179 Q. And with those trees growing on it?

A. Yes, sir.

Objected to as leading.

Mr. BUTTERFIELD: I have asked you before whether there was any trace of any old channel south of the island, and if you surveyed and if there is an outlet?

A. The water comes in from the river and goes down, and it shows on the ground that there has been a passage also there.

180 Q. How far south is that where the line of the island is?

A. From 75 to 100 feet.

181 Q. Where the line stops it is about in the same condition that it always has been, isn't it?

A. I should judge so.

243 182 Q. The surface of the land and the indications are that it is about the same as it always has been?

A. Yes, sir.

Defendant's counsel then recalled RANSOM C. LUCE, who further testified as follows:

54 Q. In your statement this morning as to the number of islands, how many islands did you place there in No. 2, north of Fulton street?

A. Well, I have always called that No. 1, the first island.

55 Q. About where did that upper island lie with reference to the present line of Pearl street?

A. It lies south of it.

56 Q. About how far from Pearl street, extended?

A. I couldn't tell, sir.

57 Q. I understood you a minute ago to say Pearl street was on No. 2.

A. I think that one end is on the upper end of the island, somewhere along there.

58 Q. Now, about how large was that upper island; have you been onto it?

A. Years ago; yes, sir.

59 Q. How large is that there?

A. Well, now, I couldn't tell.

60 Q. Oh, about—was it a very small or quite large island; did you ever do anything on there; do any work, or have any sports or anything?

A. In the fall of 1843 I went over there and drew some stones; somebody stopped me and said the Government had put those stones there, and I mustn't take any more stones away.

61 Q. Was there any channel there between them; that is, dividing the upper island into two parts?

A. There might have been one there.

62 Q. Was there any then?

A. I couldn't tell exactly whether there was one there or not. I know since that time there is a depression there, and it looks as if there had been one some time. We used to go over there and play ball years afterwards.

244 Mr. BUTTERFIELD:

63 Q. How far up did the north end of what you call Island No. 1 extend?

A. Up about Pearl-street bridge.

64 Q. Isn't it north of that?

A. It may reach a little mite north of it, but not much, I guess.

65 Q. How wide was it where Pearl street would cross it, if extended?

A. It might possibly be 100 feet; might have been.

66 Q. Did it grow wider or narrower as it went south?

A. Wider.

67 Q. How wide was it in its widest part?

A. That would be pretty hard to tell.

68 Q. Oh, well, give us your best judgment.

A. I should think 30 or 40 rods.

69 Q. How far south did it go on below Pearl street?

A. Extended north from Fulton street.

70 Q. How far north to the Grand Rapids & Indiana railroad bridge as it now stands? Are you able to fix it by that?

A. Well, it has been changed. I haven't looked it over at all. The Indiana road is south of the point of the island.

71 Q. You think it crosses south of the island?

A. I think so; yes, sir.

73 Q. How are you able to tell the present line of Fulton street?

A. Well, all the way I can fix it—we used to cross the ferry to Fulton street.

74 Q. You fix it by the ferry that was there then?

A. Yes, sir.

75 Q. When did you first cross that ferry?

A. I think in 1842 about; in the fall of 1842.

76 Q. Where was the ferry with relation to the old red warehouse? Do you remember that?

A. Yes, I remember the red one, and the white one and the yellow one.

77 Q. The red house was furtherest south, wasn't it?

A. I think it was the white one.

245 78 Q. Was it Richard Godfroy's warehouse? The red one or white one?

A. It was either one or the other; I couldn't say.

79 Q. You weren't here when Richard Godfroy was here?

A. No, sir; he went away about the time I came.

80 Q. How far south of the southerly warehouse was the little creek?

A. Well, there was a little creek; I should judge two or three hundred feet; I couldn't tell exactly.

81 Q. Where was the ferry with reference to the little creek?

A. It was right around the corner of the warehouse, or right close to the warehouse.

82 Q. Then the ferry would be two or three hundred feet north of the little creek, as you judge?

A. It might have been two hundred feet.

83 Q. Did you ever notice a little sand bar off the mouth of the creek?

A. A little bit of a sand bar there at the mouth of the creek.

84 Q. Wouldn't you call that an island or sand bar?

A. No, sir, I wouldn't call it an island.

85 Q. How large was it?

A. Well, the water would come down that creek, and a little sand gathered around there; a little sand gathered around the mouth of the creek.

86 Q. How far did that extend out into the river?

A Well, to take it in a straight line I couldn't tell you; right below this creek.

87 Q. Now, you take it straight over, there was a point of land that ran out with a lot of rocks there, and when the water came down the river it would strike that point and send it over on the bank. The deepest place was right next to this island; they ran so close that the brush would rub against the boat.

A. The deepest place in the river was right alongside of this island.

246 88 Q. How were those stones put there?

A. I think they came there naturally.

89 Q. It turns the current westwardly, is that it?

A. Yes, turns the current westwardly.

90 Q. How far was it from that point to the head of Island 3?

A. Well, it must be 50 or 75 feet, along there.

91 Q. When did you first go to Island 3, Mr. Luce?

A. It must have been about in 1850. I used to go there very often.

92 Q. I call your attention now to Island 3; Holmes island; that is the big island that you now call No. 3?

A. Yes, sir, that is what it has always been called.

93 Q. And the reason you call it Holmes island was because Judge Holmes was interested in it?

A. Yes, sir.

94 Q. The present judge of the criminal court here?

A. Yes, sir.

95 Q. When were you first on that island?

A. A good many years ago, 35 or 40 years.

96 Q. How long after you came here?

A. It might have been three years, it might not have been as long as that. May be over that; I can't tell to a day.

97 Q. Have you a definite recollection of your visit there, or do you simply remember you was there about that time?

A. I used to go there, yes; used to — there with the boys—to have some fun with the boys.

98 Q. Were you ever on the north end of Island 3?

A. The Holmes island?

99 Q. Yes, sir.

A. Yes, sir.

100 Q. What did you find there at the north end of Island 3?

A. A stream there, and one thing and another.

101 Q. How wide was it?

A. Well, the stream may have been 30 or 40 feet, may not have been so large.

102 Q. You didn't observe particularly?

A. No, sir.

103 Q. What was the depth of water in it?

A. The water has been sometimes so that a boat could go in there.

247 104 Q. Well, that was in high water?

A. Yes, sir.

105 Q. I am calling your attention to ordinary or low stage of water.

A. Well, it wasn't a very deep stream of water.

106 Q. About how deep?

A. I never measured; couldn't tell you.

107 Q. Well, was it one foot or two feet?

A. It might have been a foot deep; might have been two feet deep, I don't remember. I know it lay up in there near the head of it.

108 Q. You were there in the summer time?

A. Yes, sir.

109 Q. Wasn't there times when there was but little water running through there, if any?

A. Yes, I think so.

110 Q. Wasn't there times when there wasn't any water in there?

A. I never have seen it when there wasn't some in there.

111 Q. How frequently did you see the island? About how frequently did you go there? For how many years did you see it?

A. I used to pass by the island every evening. My father's cow used to run over there and I used to go there after her frequently.

112 Q. How long was it that you continued to be familiar with the island, its position?

A. I have been familiar with it ever since I came here, I guess.

113 Q. How often have you seen it?

A. I have seen it about 365 times in the last year.

114 Q. As a matter of fact, it doesn't appear as it used to down there?

A. It is not as it was 40 years ago.

115 Q. Can you tell the position of this channel or its position as it used to be there?

A. The difference in it?

116 Q. Yes.

A. The difference in the channel now between Holmes island and the other shore can be seen, because they have dredged it.

117 Q. How does the channel north of the island that you
248 have described compare with what it was then? There is a channel there now, isn't there?

A. North of Holmes?

118 Q. Yes.

A. There is a channel in the main river.

119 Q. Isn't there a channel across the head of Island 3 now?

A. No, sir.

120 Q. No depression or anything to indicate it?

A. No, sir; not as I know of. You mean Holmes island?

121 Q. Yes.

A. No, sir. The water may possibly have been high enough to go through there.

122 Q. Well, there are times when the water overflows everything, aren't there?

A. Yes sir.

123 Q. Now, as you come next to this channel, what was the character of the north end of Island 3? Was it high, with trees, or low and swampy, next to this channel?

A. There were trees in there.

124 Q. It was high, was it not?

A. There was some large trees in there.

125 Q. Now, across the little channel 30 or 40 feet, as you say, what did you find there?

A. Nothing but water. We used to run through there with the boats, with the canoes.

126 Q. After you crossed that what did you find?

A. After we crossed it this way?

127 Q. Yes, coming north?

A. We found timber, willows and things.

128 Q. How was the ground?

A. It was dry.

129 Q. How far was it dry north in there?

A. Clear up to the upper end of the island, where the ferry used to land.

130 Q. What was the character of the timber that you speak of that you found there?

A. Some large trees on it, but most of it was willow; it ran up ten or twelve feet, maybe fifteen feet.

131 Q. Rapidly growing trees?

A. Yes, sir.

132 Q. And bushes?

A. Yes, sir.

249 133 Q. The boats ran north of the island about a hundred feet, I understood you to say this morning, north of Island 3, isn't that the fact? How far did they run north of the north part of these willows?

A. It ran up the river near the ferry, I can't say exactly how far. I disremember now. I guess it might have been 150 or 175 feet, I couldn't say exactly, between the two islands.

134 Q. You mean that, between the island north of Fulton street and the island south of it, when you got to these low willows, there was how much?

A. It might have been 150 feet.

135 Q. Might it not have been 200?

A. Yes, sir.

136 Q. Might it not have been 300?

A. I don't think so.

137 Q. Now, as a matter of fact, that deposit was a low, sandy point, wasn't it, running north?

A. There was fishing when the water was high, but when it used to go down of course it left it out and there wasn't much then.

138 Q. Now, what was the character of it? The lower end of it was highest, wasn't it? It was highest at the lower end, wasn't it?

A. I don't think there was much difference.

139 Q. You think it was about the same at the lower end as it was higher up?

A. Yes, sir; I think it was a little lower where it went down?

140 Q. I am asking you how it is between the north and south part of the island?

A. I couldn't remember that. My recollection it was about alike all over, though.

141 Q. What time was it that you went down in the night?

A. In the summer time.

142 Q. And low water, was it not?

A. I don't remember. The water was pretty deep next to the island I noticed, but it was always so.

250 143 Q. When it was deep anywhere it would be deep next to the island.

A. Yes, the deepest portion of the river is there.

144 Q. You went there in the night with a lantern?

A. Yes, sir.

145 Q. Where did you strike the bank?

A. About the center.

146 Q. To get at the pigeon's roosts you went into the bushes?

A. Yes, sir; they used to roost there.

147 Q. What was there on Island No. 1?

A. I don't think there was much on it, but some trees.

148 Q. What kind of trees were they?

A. It strikes me there was two large buttonwood trees and some maple.

149 Q. What business did you afterwards engage here, Mr. Luce?

A. In the grocery business.

150 Q. How soon after you came here did you engage in that business?

A. I came here in August and engaged in the grocery business the next winter.

151 Q. How long did you continue in that business?

A. Seventeen years.

152 Q. What business did you then go into?

A. The dry-goods business.

153 Q. How long did you continue in that business?

A. I was in that business thirteen years, I think. I have been out of business eighteen years; at least, I have been loafing that time.

154 Q. After you got into the grocery business were you in the habit of going onto this island?

A. Yes, sir.

155 Q. How long did you keep the habit up?

A. Seventeen years; I was down the river there.

156 Q. How was it about your being up the river, too, through this channel?

A. I wasn't on this channel as much as I was on the island. I used to go there often, up and down the river, very often.

157 Q. What was the width of the steamboat channel over there?

A. Down there?

251 158 Q. Yes; right opposite from, say Fulton street, and below Fulton street? Take it at the head of Island No. 3?

A. About a hundred feet.

159 Q. Is it kind of narrower or wider as it goes north?

A. Well, at the mouth of the little stream that we came in from the east it was probably twenty-five feet wider than it was above and below it.

Redirect examination by Mr. CAMPBELL:

160 Q. You have spoken of an island there, Mr. Luce, where the boys used to catch pigeons. You had to go so near the islands. Did you go on steamboats?

A. Yes, sir; you could.

161 Q. And which island was that?

A. The island in dispute here.

162 Q. North of the Holmes island?

A. Yes, that was the main channel.

163 Q. East of the island?

A. Yes.

164 Q. You have spoken of a little sand bar near the mouth of the creek; where was that?

A. Just below the warehouse.

165 Q. East of this island?
A. South.

Recross-examination by Mr. BUTTERFIELD:

166 Q. How did the width of this channel, this steamboat channel, compare with the main channel of the river?
A. It was not as wide as the main channel of the river.
167 Q. How wide was the main channel of the river in your judgment?
A. Below the island?
168 Q. No, across from Fulton street?
A. Clear across the river?
169 Q. Yes.
A. About 800 feet, I think it was.
The COURT: You mean the whole river?
A. Yes, sir.
170 Q. That would be about the width of the channel on the west side of the island?
A. Yes, sir.
171 Q. And at the head of Island 3 how does the width
252 of the steamboat channel, or what is called the steamboat channel, compare with the width of the main river, taking the west side of Island 3?
A. The main river is a good deal wider than it was this side of it.
172 Q. About how much?
A. Two or three hundred feet.
173 Q. For how long did boats come up in the west channel; up to what time?
A. I couldn't tell you.
174 Q. Don't you remember that warehouse on the opposite side of the river, and the Colfax and other boats running there right along?
A. They used to in high water.
175 Q. Didn't they use to have their regular landing place there?
A. Not to my knowledge.
176 Q. You think not?
A. No sir.

ZENAS G. WINSOR sworn on the part of the defense.

Examined by Mr. CAMPBELL:

1 Q. Where do you reside now?
A. Well, that is pretty hard to state; I have been six months in Chattanooga.
2 Q. Have you lived at any time in Grand Rapids? The city of Grand Rapids?
A. Yes, I have.
3 Q. When did you first come here?
A. In the spring or summer, I guess, some time in June, 1833.

4 Q. How much of the time since 1833 have you spent in Grand Rapids?

A. Most of it.

5 Q. Did you live here at that time?

A. No, sir; I did not.

6 Q. How long did you remain when you came here in the spring of 1833?

A. Well, I was here perhaps about three months, in the Indian trade.

7 Q. And you went away then for a while?

A. Well, I was back and forth. I had a trading post, and was at Ada and Grand Haven and more or less here.

253 8 Q. Between 1833, when you first came here, and 1840, how much of the time did you live here in this city, between 1833 and 1840?

A. Practically all the time.

9 Q. From 1840 to 1850, how much of the time did you live here?

A. All of the time; I was away in California once or twice for a short time.

10 Q. Where were you employed first?

A. I was first employed by Mr. Robinson, of the American Fur Company, in the Indian trade.

11 Q. Where was his place?

A. At Ada and Grand Haven. Those were his main points; he was more or less over the river and owned a little store here.

12 Q. Where was the store located?

A. On the east side of the river.

13 Q. I call your attention to the locality in Grand Rapids, on the east bank of the Grand river, between Fulton and Oakes streets—

WITNESS: I don't know where Oakes street is; you will have to explain it.

COUNSEL: I think that is the third street, the second street south of Fulton street; Fulton, Island and Oakes is the order of the streets. Are you familiar with that locality?

A. Yes, sir.

14 Q. Were you employed at any time at or near that place?

A. I think in 1836 or 1837, I think it was 1836, Mr. James Wattes came and built a warehouse and store there on the river near Fulton street. There was one store that Richard Godfroy built below. That was white and this was red. I was employed for him, as clerk for him, a year.

15 Q. Do you remember the ferry across there?

A. I do, very well.

16 Q. Can you tell where the landing of that ferry was?

A. On this side of the river?

17 Q. Yes.

A. Well, pretty near Fulton street; pretty near there.

254 18 Q. In 1833 and '34?

A. Yes, sir. Pretty near Fulton street. It might be a ittle lhigher up.

19 Q. How long since you have visited this locality?

A. Down there?

20 Q. Yes.

A. Last week some time.

21 Q. Within a few days?

A. Yes, sir.

22 Q. In 1833, when you came here, state what, if anything, there was in the way of islands on the east side of the river, south of Fulton street.

A. South of Fulton street?

23 Q. Yes.

A. Well, this island that you were in controversy about, and Holmes island, and Robarg island, and one on the other side of the river——

24 Q. Sometimes know as No. 4?

A. Yes; we used to call these No. 1, 2 and 3 islands. Holmes island was 3 and Robarg was 4.

25 Q. Now Holmes island and No. 3, as you understand it, are the same?

A. Yes, sir.

Objected to as leading.

A. That is the way we numbered them, if we numbered them at all.

26 Q. Do you know where the present steamboat landing is?

A. I do.

27 Q. The point of Island No. 3 runs along there, doesn't it, to the west of it?

A. Yes, sir.

28 Q. There is a slip in there were the steamer runs?

A. Yes, sir.

29 Q. Now, with reference to present lines, where was the head, the north end of Holmes island, when you first saw it in 1833?

A. Just where it is now.

30 Q. With reference to the present lines?

A. Lines by streets, do you mean?

31 Q. Yes, sir.

A. I can't say.

255 32 Q. You are not familiar with the names of the streets?

A. No, sir. It is right at the head of where that embankment is built across the river.

33 Q. And that runs across there at the head of the steamboat slip?

A. Yes, sir.

34 Q. This side of the steamboat landing?

A. Oh, no.

35 Q. North of the steamboat landing?

A. Yes, sir.

36 Q. What is there that marks it today? State whether or not there is anything in the shape of a channel or inlet.

A. Between what?

37 Q. I mean at the head of Island 3. You say where it is today. How do you mark it at the present time?

A. I understood you to speak about the steamboat landing. My answer was in reference to that.

38 Q. No, the question is, where is the north end or head of the Holmes island as it existed in 1833?

A. Just where it is now.

39 Q. With reference to the present lines?

A. In all the years following, or for a good many years while I was there, it remained about the same. There was a channel through there, I don't know whether it was quite as wide as I heard these witnesses say; I should say it was about twenty feet wide. The water ran through in there into this channel.

40 Q. Now, leaving Holmes island, after you left there, coming north, what did you first strike?

A. First struck this channel.

41 Q. And this channel you say was about twenty feet wide?

A. About.

42 Q. After crossing the channel what did you strike?

A. This Island 3.

43 Q. How far did that island run with reference to the present lines of Fulton street?

A. Do you mean by that, running into the river?

44 Q. No, north from the channel?

A. Up this way?

45 Q. Yes.

A. Well, it was certainly twenty rods.

256 46 Q. Which way from Fulton street?

A. North.

47 Q. What was the character of the surface of that island then, as it was then, when you first saw it in the year 1833?

A. The lower part of that island is hard ground with trees on it, at the low time of the water, six, eight or ten feet above low water, this south part here. It came along up in the channel that we used to ferry across. There it extended up north; the ground was low and covered with willows and maple.

48 Q. Now, in the early days, did you ever cross and recross on that ferry?

A. Hundreds of times.

49 Q. State where the ferry crossed the river with reference to this island that you described.

A. Just above.

50 Q. About Fulton street, near Fulton street?

A. Near Fulton street.

51 Q. And north of this island?

A. Yes, sir.

52 Q. Are there any trees or anything growing there today that were growing there in 1833?

A. Yes, there are three large trees on the south side of the island standing there; old large trees.

53 Q. When did you first go on that island?

A. First?

54 Q. Yes.

A. In 1833 I was right there in the store there. I went in swimming in there hundreds of times.

55 Q. State whether you were over the entire surface of the island at any time.

A. I couldn't say exactly.

56 Q. Did you go onto the island near Fulton street, on the north part of it?

A. I think I was on it; yes, sir.

57 Q. When?

A. Oh, early years, and since, a good many times since. Let me see. In 1856, I think it was, I was engaged with Daniel Ball, and had charge of his boating interests. Occasionally we would get fastened on that island.

58 Q. How old were you when you came here in 1833?

A. Nearly 19.

257 59 Q. Was there any business, or any kind of business, carried on — this island?

A. Never. The Indians camped there lots of times.

60 Q. Did you ever go on there hunting and fishing?

A. No, sir; I never was much of a hunter or fisher.

61 Q. Now, after 1833 were you on this island?

A. From 1833 down to 1850. I don't remember the years. I guess about 1855. Then I had charge of the boats and went all around there, down here to the boat landing.

62 Q. You say that is 1850?

A. No, sir; I think it was about 1855. In the year 1855 I engaged with Daniel Ball.

63 Q. You had charge of the boats?

A. Yes, sir.

64 Q. How long?

A. Three or four years.

65 Q. What did you do then?

A. The next I engaged in merchandise and saw-milling.

66 Q. Where?

A. Well, the mill was up at Rouge river; I was merchandising here; had a store in town here that we built.

67 Q. If I understand you, during these years, until nearly 1860, your business was down here in this locality?

A. Yes, sir.

68 Q. Now, just state what the condition of that island was. I will call it No. 5 to identify it. State what it was during those years.

A. I never saw very much change in it for quite a number of years. The upper end might have filled up a little more with sand; I don't know particularly about that. I never saw any visible change.

69 Q. What islands were there north of Fulton street in 1833?

A. The island we used to call No. 1, and there was a little island separate from that, when I first came here. A little down the river from the main island, a little bit of a channel ran through between, but it filled up so that it became extinct.

258 70 Q. Now, in what year was the steamboat put onto this river?

A. The Gov. Mason was the first boat. I really can't quite say when that was.

71 Q. As near as you can fix it?

A. Well, I should say pretty early in the 40's; possibly the very latter part of 1833.

72 Q. Where was the landing of that boat in Grand Rapids? What dock had she there?

A. We had a little dock down below here, down where I was, down in that neighborhood.

73 Q. Near Fulton street?

A. Yes, and then we used to come up here in high water, come clear to Foster's store and Robinson's store, up into the basin with the boats.

74 Q. In high water—in going to and from the dock there—through what channel did the boat usually pass?

A. Always down this channel, the east channel.

75 Q. You mean the channel east of the islands?

A. Yes, sir.

76 Q. Did you ever make any measurements so as to be able to state which was the deepest channel in the river at that time?

A. Yes, sir.

77 Q. Which was the deepest?

A. The one on this side.

Objected to as irrelevant, incompetent and immaterial.

WITNESS: Well, I might correct that a little by saying I didn't particularly look, only to see whether we could get over to a little warehouse on the other side of the river with our boats.

78 Q. When did you make the measurements?

A. In the early days, when I was a boy; 1850 something, '56 or '57.

79 Q. Do you remember when a survey of this island was made by a Government surveyor in 1855?

A. I remember hearing of it; I didn't see the surveying done.

80 Q. You took no part in it?

A. No, sir.

81 Q. Did you last week go over to this Island 5, along up
259 the west side of it, along the river bank?

A. Yes, sir.

82 Q. How did it compare from Fulton street down to below the big trees that are growing there as you knew it in early years, in the 30's.

A. Below the big trees?

83 Q. North of them? I mean from a point below those trees. Well, take it from those trees.

A. Well, in that neighborhood it didn't seem to be very much changed. I should say there was a little more ground there than there was in the early days, in my judgment.

84 Q. From which side was the filling?

A. I couldn't say exactly; simply, I noticed it was grassed over there, and they had opened up. I noticed more particularly about it—a great many years ago there was a birch and some willows, quite large, along up to the present line of Fulton street, and for some distance north of it.

85 Q. You say there was some grass there, and had some willows?

A. Yes, sir.

86 Q. How far was there at any time, in ordinary times of water, during the first twenty years, when there was any dry land from, say Fulton street south to this channel between the two islands?

Objected to as leading.

87 Q. State whether or not there was at any time during ordinary times of water, when there was any dry land from Fulton street south to this channel between the two islands?

A. Well, south of it would be on the Holmes island.

88 Q. No. I say from Fulton street to the channel north of the Holmes island.

A. Well, I should judge in ordinary water you could get onto the island very well.

Objected to as not responsive to the question.

89 Q. Do you mean to say there was dry land there, that it was dry?

A. Yes, sir.

Objected to as leading.

260 90 Q. State whether on the present line of Fulton street there was willows growing there. You have spoken of a part of it there where willows were growing?

A. I should say that this little island that the controversy is about hardly came up to Fulton street. I can't exactly locate that. I think that the point of that island where the willows were came a little above Fulton street.

91 Q. How far north, with reference to Fulton street, did the willows grow?

A. I think, on reflection, it might have been 50 to 75 feet. I have been stopping to think and reflect about the way the boats ran.

92 Q. Fifty or seventy-five feet from what?

A. From Fulton street. Didn't you ask how far north of Fulton street the willows extended?

93 Q. Yes. Do you mean to say that there was a certain place on this land that was higher than the rest and trees were growing on it?

Objected to as leading.

A. Yes, on the lower part of the island.

94 Q. And for some distance north of those trees there was willows growing?

Objected to as leading.

A. A distance from those trees north.

95 Q. And you think the ground covered by those willows extended 75 feet north of Fulton street across this present line?

A. Yes, sir.

96 Q. About how far below did that run, below the present line of Fulton street?

A. Well, I should say not over a hundred feet anywhere.

97 Q. That is your present estimate of it?

A. Yes, sir.

98 Q. And what was there onto the south from the point where the willows stopped?

A. More or less willows then, and various kinds of trees.

99 Q. Was there more trees than there are on it now?

A. In the early days there used to be more trees growing; yes, sir.

261 100 Q. And how near to Fulton street on that island did the trees grow?

A. There was timber in the early days, in the thirties I would say, up within a hundred feet.

101 Q. To the present line of Fulton street?

A. No, sir; not as far as that; I mean from the upper part of the island.

102 Q. And they came this way a hundred feet?

A. Yes, sir. From where the channel runs there between Holmes island. I should say the hard ground and large trees extended up that distance, and then they didn't seem to be quite so large.

103 Q. There was some timber there though?

A. Oh, yes.

104 Q. How far did any timber extend?

A. I should think to Fulton street.

105 Q. East of this island and these trees I think you have stated there was a channel there, between that and the east bank?

Objected to as leading.

A. East of this channel; which channel?

106 Q. East of this island you are describing. You have stated there was a channel in there through which the steamboats passed. About how wide was that channel at that time?

A. I should say a hundred or hundred and twenty-five feet wide, until it got up here, about the center, and then it narrowed up a good deal.

107 Q. Now, up to what time did the steamers run through this east channel up as far as Fulton street, up to the dock?

A. Well, in very low water we wouldn't run up as far as that. We would run still further down. It was about in the neighborhood of where the present steamboat landing is. In ordinary water

we would run up as far as that. In high water we would run clear up; up to the basin.

262 108 Q. Where was the basin?

A. At the foot of the present canal basin. There was a dock up there.

109 Q. It was north of Pearl street?

A. Well, it wasn't really a basin. It was a dock that the boats used to run in there.

110 Q. State whether or not they ran up to that point there during some parts of the year, excepting when the water was very low?

Objected to as leading.

A. We wouldn't in ordinary water. The smaller boats would come up, but the steamboats would hardly run up. I know I have landed a great many loads up there near Foster's store and Robinson's store when the water was ordinary.

111 Q. Up to what year, if you remember, did the steamers continue to run up to the basin, north of Fulton street, in the east channel?

A. Until they filled in Pearl street cross Island No. 1.

112 Q. Do you know when that was, about?

A. I couldn't say exactly.

113 Q. Do you know anything about the platting of that island, whatever? Did you have anything to do with that?

A. No, sir.

114 Q. You have no means of stating the date when that channel was filled between Island No. 1 and the bank?

A. I couldn't really say within five years. I might think a little while, I would say probably about 1860.

Cross-examination by Mr. BUTTERFIELD:

115 Q. I understood you to say you came here in 1833?

A. Yes, sir.

116 Q. What was your employment when you first came here?

A. Well, the first thing I done, perhaps, after I came, I came to Ionia, and then came down the river; the only way was by
263 an Indian trail. I stopped at Robinson's, in town, and he saw me, and he wanted to know if I wanted employment, and I said yes.

117 Q. What was the nature of that employment with him; where was it?

A. At Ada and Grand Haven and here; principally at Grand Haven, the first two years.

118 Q. You were working largely in the interest of Robinson, and he was in the Indian trading business?

A. Yes, sir.

119 Q. And his principal receiving place was Grand Haven?

A. Yes, sir.

120 Q. You attended to his business there?

A. Yes, sir.

121 Q. How long did you stay there?
A. About two years.
122 Q. Then what business did you engage in?
A. I think the next thing I done was at Kalamazoo, trading in lands with Capt. Lacey.
123 Q. Where was that?
A. At Kalamazoo. I wasn't in business there.
124 Q. How long did you remain there
A. I didn't remain there any particular time. I was back and forth.
125 Q. What was the nature of your business?
A. Lacy and me went in together in the land business in 1836 and '37, along about that time.
126 Q. How long did you continue in that business there?
A. About three or four months.
127 Q. What did you then do?
A. Then the money that I got of that—I know I did very well there, I know I got five thousand dollars out of it; I came down here, and I was so rich I wanted to buy out the whole town. I invested some of the money in Grand Rapids real estate.
128 Q. Now what did you go into then, what employment? Did you live on the interest of your money?
A. No, sir; I didn't have enough money. I am not quite
264 positive, but I think the next thing I done in the way of business was to buy an old factory on the corner of Bridge and Canal street, making pails and tubs and such.
129 Q. How long did you continue in that?
A. Two or three years.
130 Q. Afterwards what did you go into?
A. The next business was merchandise.
131 Q. Where?
A. In Grand Rapids, in a store here that we built. It was opposite the old Rathbun house.
132 Q. On Monroe street in Grand Rapids?
A. Yes, sir.
133 Q. How long did you continue in that business?
A. Three years, about.
134 Q. That would bring you to 1840, wouldn't it?
A. Later than that. Oh! no, I am getting a little too fast. I had a farm on Rouge river along there for two years, from 1838 to 1840. And then I came and went to merchandising in Grand Rapids.
135 Q. You were a merchant here how long, how many years?
A. About three years.
136 Q. That would be 1843, wouldn't it?
A. Yes, sir.
137 Q. What did you do then?
A. And after that—I should say it must be about '44 or '45—well, I can't think what the next thing was.
138 Q. When did you go to California?
A. I think I went in 1851 the first time.

139 Q. Between the time you stopped merchandising here and when you went to California, what was your business?

A. That is the point that I want to get at.

Recess of five minutes.

140 Q. Now, Mr. Winsor, from the time you left the dry-goods business on Monroe street, what did you do. If you can't remember, you can just say so. I don't want to take up any more time?

A. Well, I have forgotten.

141 Q. When did you go to California?

A. In 1850, I think. Well, I was engaged in building
265 houses here. I think it was about that time. I had a lumber yard, had a saw-mill on Rouge river, and had a lumber yard in Canada—I was over there some.

142 Q. When did you go to California?

A. In 1850.

143 Q. How long did you remain?

A. Between two and three years.

144 Q. When you came back what did you engage in?

A. In the boating business.

145 Q. When was it, 1853 or '55?

A. In 1853 or 1854 I worked for Ball.

146 Q. What were your duties?

A. I had charge of the boats.

147 Q. Did that involve running the boats at all?

A. No, sir.

148 Q. You simply acted as the warehouseman and had charge of the warehouse?

A. Yes, sir, and the boats.

149 Q. You didn't have anything to do with the management of the boats?

A. Not with the running of them; no, sir.

150 Q. They were run by other employees?

A. Yes, sir.

151 Q. How long did that arrangement continue?

A. About three years. I guess it was—well, after I got through, Ball sold out his boating interests and we went to Grand Haven, and we continued to ferry on that. I remember of that. They had to have some one to take charge of it and so they gave me the boats.

152 Q. You went to Grand Haven and took charge of the business?

A. Yes, sir; they bought the boats from Ball.

153 Q. You went into their employ in the same capacity as you were in Ball's?

A. Yes, sir.

154 Q. How long were you in there?

A. One year.

155 Q. Then what?

A. Then Daniel Ball bought a bank of some fellows in
266 New York State, and he wouldn't buy it with them unless they made him a present, and he telegraphed me to come to

New York to see if I would do, and he thought I would, and I went into it.

156 Q. How long did you continue there?

A. About a year.

157 Q. What became of the bank?

A. The directors were afraid of Ball, and they kind of sat down on the business.

158 Q. Well, what next after that?

A. Well, that is up to about 1856 or '57. The next thing I engaged in, there was some parties here, some ten men, went to Petroleum, Canada, and bought some oil property there.

159 Q. How long were you in that business?

A. About three years.

160 Q. Where did you go then?

A. Well, that is pretty near up to 1868, I guess. In 1868 I went to Grand Haven.

161 Q. How long did you remain there?

A. About seventeen years.

162 Q. You lived there?

A. Well, I called this my home all the time.

163 Q. Well, you went to Grand Haven when your business called you there?

A. Yes, sir.

164 Q. You speak about the island in this case; about the land in question. What tract of land is in question in this suit?

A. As I have understood it, it has always been called Island No. 2 below Fulton-street bridge.

165 Q. Who informed you that it was Island No. 2?

A. I don't know as it was anybody.

166 Q. How did you know what land was in issue in this suit?

A. I think I have heard enough said about it. There has been questions enough asked and answered.

167 Q. Who have you talked with in reference to this suit before you came and testified?

A. Very little with any one.

267 168 Q. No. I don't ask you that. I ask you who?

A. I talked with Mr. Campbell, I guess.

169 Q. How frequently have you talked with him?

A. I guess we haven't talked more than once about it, upon that subject. I asked him if the suit was going on.

170 Q. Have you talked with Mr. Heath?

A. I think I have.

171 Q. With Mr. Luce?

A. No, sir.

172 Q. Never said a word to him about it?

A. Yes, when I went there to him, during recess.

173 Q. Didn't you ever talk to him at all about it at any other time?

A. Not until today.

174 Q. Never said a word about it? Well, you talked to him about it today?

A. Well, I don't remember if I ever said a word about the island.

175 Q. When were you first on that island, the first date you can remember of?

A. 1833. I was there very often.

176 Q. I want the first time you can distinctly remember?

A. I can distinctly remember of going down to Mr. Robinson's place over the river, and going back and forth by the ferry.

177 Q. Did the ferry-boat, when you started it—is that the only way you remember of being on the island?

A. I don't say I have never been on the island by going on the boat.

178 Q. I ask you when do you remember distinctly of going on the island first?

A. I should say in 1836 or '37.

179 Q. What did you go on there for at that time?

A. Well, perhaps being in swimming.

180 Q. Well, I don't ask you what perhaps was. Do you know what you went on there for?

A. I don't know as I could say.

181 Q. Where did you strike the island at that time?

268 A. I may have struck it by being in the stream, perhaps at the lower end.

182 Q. In other words, you don't know today where you did?

A. I have never given that thought enough to say.

183 Q. How many trees at that time were there north of this little island across the head of Island 3?

A. I don't remember very distinctly. I do remember this large tree; I well remember that. It seems to me there was more than three; four or five, I think.

184 Q. You think there was five?

A. Four or five.

185 Q. Now, how wide was this channel that you remember of at the head of Island 3? I understood you to say twenty feet wide.

A. About that.

186 Q. Was that in high or low water?

A. That would be in medium water; I would say even lower than that.

187 Q. In low water was there any water there at all?

A. I think so.

188 Q. Were you ever there in low water?

A. Yes, sir.

189 Q. How deep was the water in that channel?

A. Not very deep.

190 Q. What is your judgment?

A. Two or three feet.

191 Q. Wasn't it less than that?

A. I don't think so; it might be less; certainly not less than two.

192 Q. Was the bottom even or was there holes along at places?

A. I couldn't say.

193 Q. Couldn't tell me about that?

A. I think it was the same all along.

194 Q. Was the width uniform or wider in some places than others?

A. I couldn't say. I think it was pretty nearly uniform.

269 195 Q. What was the character of the north side of the little channel?

A. It came right onto the island.

196 Q. What was the character of the land? Was it high or low land?

A. I should call it dry land.

197 Q. How high was it above the ordinary run of the river?

A. Well, I don't know; I couldn't tell; I should say two or three feet high.

198 Q. In ordinary stages of water?

A. Yes, sir.

199 Q. And in low water how high was it?

A. It would be more than that; it would be rising, you know.

200 Q. What would it be?

A. It would be a foot or two or more.

201 Q. How wide was the land on the north of this channel?

A. On the north?

202 Q. Yes, how wide was it?

A. That would be the south side of the island?

203 Q. That is what I want. Just as you go north across this channel, how wide was the land that you then struck?

A. My judgment would be that it was two or three hundred feet.

204 Q. How far north did it continue in that width?

A. Well, I should say perhaps ten rods or a little more.

205 Q. Then at that point, at the end of the ten rods, how wide was it?

A. It gradually came to a point.

206 Q. How rapidly was it, rapidly or slowly?

A. I should say slowly.

207 Q. How wide was it where it crossed Fulton street?

A. Well, it wouldn't be as wide; I couldn't exactly say; it don't seem to me that Fulton street crossed there; I should think it was a little bit north of Fulton street.

208 Q. About how far north of where this——

A. I am not very positive about Fulton street, because it wasn't used much in them days; it wasn't used much.

209 Q. How wide was it? Just give a description of the
270 width. You can by the distance. You say it ran so many feet wide? How wide was it after that?

A. Well, for some number of feet it would be half or a third of that distance, and it would more rapidly come to a point.

210 Q. A sharp point?

A. Not a very sharp point, no.

211 Q. There would be bushes and trees?

A. Yes, sir.

212 Q. How was the water above the point?

A. So you could cross in the ferry-boat; I have waded it.

213 Q. So you could cross it from the ferry-boat?

A. With the ferry-boat.

214 Q. How far was it to the next island further up the river?

A. That is where they went through with the ferry; well, I should say it was 150 feet.

215 Q. Then, if you testified, on your direct examination, that the island ran 20 rods north of Fulton street as it is now, you are mistaken?

A. I don't think I stated so.

216 Q. I say, if you did so state?

A. Well, yes, I should judge I was mistaken if I said 20.

217 Q. If you testified that it ran 75 feet north of Fulton street, you are mistaken?

A. I think I was, yes, sir.

218 Q. You are not sure as to where the line of Fulton run?

A. No, sir, not as I found it at that time.

219 Q. Your attention was not called to this at that time with a view to measuring the exact distances?

A. No, sir.

220 Q. You just endeavor from your memory of the place without anything to fasten it in your mind for thirty years, to tell us that distance?

A. Yes, sir.

221 Q. Now, how rapidly—you say at the lower end of the island, in ordinary stage of water, the surface of the ground was three feet above the water; did it grow higher or lower as it went north?

A. I think it receded a little.

222 Q. How rapidly?

A. Not very rapidly.

271 223 Q. It kept up its height in ordinary water the whole way up, you think?

A. No, its full height—it receded some.

224 Q. How rapidly did it recede?

A. Not very rapidly, but apparently it was a little lower. I would like to have a little more time to think about the distance from the foot of the island to Fulton street.

COUNSEL: Well, sir, take any time you want to. Now, give us your best recollection?

A. Well, I can't tell whether Fulton street was across the point of that island or not.

225 Q. Can you tell how far it was south of Fulton street as it at present is, how far is it down to the head of this island that you have been talking about?

A. To the north end of it?

226 Q. Yes.

A. I just said I couldn't tell. I can't think about Fulton street for the reason that I don't think Fulton street extended down there.

227 Q. How far was it south; in going out, did the ferry-boat go upstream first or down-stream?

A. It might go a little down, not very much.

228 Q. Did you ever see that small channel on what you call the

north end of Island No. 3 when it was under water and water flowing over it?

A. I have no recollection of that.

229 Q. Was your attention at any time particularly called to the extent of this low point that you speak of?

A. No, sir.

230 Q. Never was?

A. No, sir.

231 Q. You went down there to examine these premises, did you not?

A. Yes, sir.

232 Q. At whose request did you go?

A. I think—I am not sure, whether it was Mr. Campbell—no, I guess it was at Mr. Heath's request.

272 233 Q. You came here from Chattanooga, at their request, to be a witness in this case, did you not?

A. Yes, sir.

234 Q. When you got down there you found from Fulton street south to the embankment, across to the head of the steamboat channel—you found that an open place, dry ground, with here and there a filling extending out?

A. Yes, sir.

235 Q. Was anything there that would indicate to you this point of land which you speak of; if so, what was it?

A. This channel?

236 Q. No, but the point of land, and its position or size?

A. What point of land?

237 Q. What you call the land in dispute.

A. Did I see anything that would indicate where the island was and is?

238 Q. Yes.

A. Yes, sir.

239 Q. What was it?

A. Well, I saw that channel. There is a depression there now as I could see, evidently where the same place was where the channel went through.

240 Q. In other words, you saw the place where it was indicated to you that some date there had been a channel along there?

Mr. CAMPBELL: Is that the one between these islands?

WITNESS: Yes, sir.

Mr. BUTTERFIELD:

241 Q. Now, what is the amount of the water in the river as compared with what it used to be, as you remember?

A. I don't think the water is much lower. Some people imagine it is lower than it is.

242 Q. About the same?

A. I think there is a little less water, but not much less. I have known it so well, I think I can tell pretty well.

243 Q. Did you examine to see whether there was any old channel north of these big trees that stand there now?

A. I didn't look to see that.

273 244 Q. When you go up the river there was none of the present landmarks until you get to the warehouse- that were there in 1836 and '37; no landmarks or building anywhere around there?

A. No, sir; but I was frequently down there when these old warehouses were there.

245 Q. They were down about where the Barnard house property is?

A. Yes, sir, near the river. There were three of them.

246 Q. Back of what is now the Barnard house?

A. A little further up, I should judge.

247 Q. Do you mean to say that you can go back there and have any definite idea of the location of things as you saw them in 1836, in the present condition?

A. A good many things. There may be some little points I could not; I can very well though. I was in the habit of going down there more or less.

248 Q. Now, as to this channel that you speak of that you say is in the center, what is the condition and extent of the land between it and the river as it is now?

A. You mean the boating channel?

249 Q. Yes.

A. Do you mean to ask the width of the channel?

250 Q. I mean to ask you for the amount of land that you saw when you were down there the other day between the west bank of the clearly defined channel there and the east bank of the Grand river as it runs today?

A. I don't think I could answer that.

251 Q. About how many feet, nearly five hundred, isn't there?

A. No, sir.

252 Q. How much would you say?

A. You mean from the east bank of Grand river to the west side of this island?

253 Q. I said nothing about the island. I ask you from the west side of this channel as you claim to the east shore of Grand
274 river, from the west side of the channel as you saw it the other day when you went there, how much land is there between the west bank of that channel and the west bank of the river as it is now?

A. Only the amount of that island. I never noticed enough about it then to form any opinion as to the character or size. I should say the whole thing was four, five, or six acres.

254 Q. And that, you say, is about the same as it was when this island was there?

A. Yes, sir.

255 Q. So that you think that the north point that ran up there contained five or six acres according to your best judgment, this island in dispute, as you saw it in 1836, you think that contained five or six acres?

A. I should think so.

Mr. CAMPBELL: What buildings were there there at an early date, Mr. Winsor, on the east bank of the east channel in 1833?

A. There was none in 1833.

256 Q. When was the first building built there?

A. I should say about 1835.

257 Q. What was the first building built there?

A. There was three buildings there. Mr. Godfroy built one and Mr. Watters another, and uncle Louis Campau had another that they used for a hotel.

258 Q. Which of these buildings was furthest to the south?

A. The one that Godfroy built.

259 Q. What was the color of that?

A. I think it was white.

260 Q. What was it used for?

A. He was engaged in the Indian trade.

261 Q. Storage for goods?

A. Yes, sir.

262 Q. Where would you say, with reference to present lines, that house stood?

A. It must have stood very near Fulton street; I don't think it was below.

263 Q. Where Fulton street now is?

A. Yes, sir.

264 Q. Do you remember a creek that ran over there?

A. Yes, sir.

275 265 Q. Which side of the warehouse did that run, north or south?

A. South.

266 Q. How far south; a short or a long distance?

A. Not a very long distance.

267 Q. Which building was next to that on the north?

A. Robinson's store.

268 Q. What was the color of that?

A. Red.

269 Q. What year was that built?

A. About the same year. I think it was 1837. No, it was earlier than that; 1836, I believe.

270 Q. Were you ever employed in that warehouse?

A. Yes, sir.

271 Q. At what time and how long?

A. Very soon after it was built.

272 Q. How long did you work there?

A. Nearly a year.

273 Q. Now, with reference to the location of that warehouse, would you have fixed that location today by any mark?

A. I don't know as I could by any mark; I could go down there and tell by some little buildings that are in there today.

274 Q. How far would it be from Fulton street as it is at present?

A. It would be north.

275 Q. About how far north from the present line of Fulton street?

A. One hundred feet, perhaps.

276 Q. Where was the ferry with reference to that warehouse?

A. It was a little further down than this red warehouse; there was an open space right opposite to that, too.

277 Q. Now, you take a line from that red warehouse as it stood there, across to the west bank of Grand river, how near to the head or north side of this island would you come, as the island was in 1833 and 1834?

A. That is what I call Island No. 2, isn't it?

276 278 Q. Yes; north of Holmes island?

A. Well, perhaps not much more than 100 feet; possibly 150.

279 Q. Now, the ferry starting out from this point south of the warehouse, was it between the red and white warehouses?

A. I think it was just below the white warehouse where it started.

280 Q. Was the ferry running there in 1833?

A. No, it was not.

281 Q. When was it established?

A. Not earlier probably, I should judge, than 1834 or '35; that is my impression, 1835.

282 Q. Take that ferry, leaving that point where it started, which you remember; of course, you remember where it started, although you can't fix it today? You can't fix, by any mark of any kind, where that ferry landing was?

A. I could not exactly.

283 Q. Take the ferry, starting from that point and going out into the river there, it went straight out? How near would it go to the north end of this Island No. 2, or No. 5, as it lay there, in 1833, 1834 and 1835?

A. She went with the current, drifting down more or less, and would, perhaps, drift out onto the end of that island.

284 Q. It was down-stream how far?

A. Not very far.

285 Q. Going down as far as the current would carry you, it would pass near to the head of this island?

Objected to as leading.

A. Yes, sir.

By Mr. CAMPBELL:

286 Q. The talk that you had with me was in Chattanooga, wasn't it?

A. Yes, sir.

287 Q. I wanted to take your deposition down there?

A. Yes, sir; that was the only talk I had with you, except when the case was called up.

288 Q. Did you go down onto the island when you came from Chattanooga?

A. Yes, sir.

277 289 Q. How far north of this piece did you go?

A. Well, we got off the bridge onto the hard land from there.

290 Q. There is a depression and willows in there, isn't there?

A. Yes, sir.

291 Q. Right below Fulton street and west of the west bank?

A. Yes, sir.

292 Q. What is there there at this day that marks the line of the old channel between Holmes island and this one?

A. Well, there is really nothing there beyond the fact that there seems to be a depression in the ground.

292½ Q. Do you remember a roadway built up there passing across a low piece of ground there from one place to another south of this large tree furthest north? On this hard land, near to the east bank of the river, at a place just north of the line of Oakes street, there is another roadway running north and south from what I should call one island on to the other? Did you notice that as it is to-day?

A. I don't think I did; I don't remember exactly. I used to cross the roads a good deal when they had gone through there. I can't see any distinct road in there, though.

293 Q. While you lived at Grand Haven, and were coming back and forth from Grand Rapids, how did you travel?

A. By boat always in the boating season; it didn't cost anything then.

294 Q. Where did you land in Grand Rapids usually?

A. That depended on the stage of the water.

295 Q. Well, ordinary water?

A. We landed where they land now, about in that neighborhood.

296 Q. What year was it that you went to Grand Haven?

A. In 1838. I was 17 years old.

297 Q. Going down to Fulton street you went past these trees along that way, along the bank of the river, and they extend up the line of the old channel towards the island?

A. Yes, sir.

Objected to as leading.

278 Recross-examination by Mr. BUTTERFIELD:

298 Q. Who went with you to look at these trees?

A. Mr. Heath.

299 Q. He is in the employ of the railroad company, is he not?

A. I can't say; I assumed that he was.

300 Q. Did he show you the old channel, as you call it?

A. I don't know that he did.

301 Q. He went there with you?

A. Yes, sir.

302 Q. How high is the bottom of that old channel above the river?

A. You mean from the top of the ground?

302½ Q. Yes, sir.

A. I can't say. There has been dirt put in there.

303 Q. Has there dirt been put in this channel that you saw there?

A. More or less.

304 Q. Didn't you testify that you found this old channel?

A. Yes, sir.

305 Q. Was there any dirt in that channel?

A. Not exactly, but there is somewhere it seems to be.

306 Q. Well, where there has not any dirt been filled in, how high is the bottom of the channel above the river as it is today?

A. I have to go there and measure.

307 Q. What is your best judgment as to that?

A. Above the surface of the river?

308 Q. Yes.

A. I should say it was not very far from the level.

309 Q. The water pretty near ran into it?

A. Well, no; this is on the upper side. It is a little lower there than it is down a little lower, it appears to me to be. I am not certain as it was ever filled in at all; it appears to be a little lower.

Mr. CAMPBELL:

Q. Which channel do you mean?

Mr. BUTTERFIELD: The channel that he has been testifying about that he found on the north end of what he called Holmes island.

279 310 Q. You say that has been filled in?

A. No, sir, I don't say that.

311 Q. Well, taking it as it is now, how much higher than the river is it?

A. Well, I should think it is a foot higher.

312 Q. It is high water now, isn't it?

A. It is higher than I have seen it here at any time. But I don't think if you take the surface of the water as high as it is now—it would be a little lower I should judge.

313 Q. This channel would be a little lower?

A. Yes, sir.

314 Q. Did you go up along each way of the river from that channel?

A. No; I think we got over another way.

315 Q. You didn't go up to see if there was any other channel north of these big trees?

A. No, sir; I passed over it all.

316 Q. No remains of any old channel there? How do you find it north of the tree? About the same as it was?

A. Well, I don't know about that. When I left it the water ran through there.

317 Q. Well, how did you find the surface as you last saw it as compared with the present time?

A. It was lower then, because the water was passing over it

from the channel to the river and the river to the channel, in the channel.

318 Q. I am talking about the island north of the tree. How did you find that? About the same?

A. In what respect?

319 Q. As to the height above the river?

A. It is a little lower, I should say, around the upper part.

320 Q. Is it lower than it was in 1837 when you saw it?

A. Perhaps it wasn't.

321 Q. About the same, isn't it?

A. I should judge so. It might be a little higher.

322 Q. How much?

A. I couldn't estimate that.

280 323 Q. Well, your best judgment?

A. Well, there is parts of that island, the upper part of that island, that was a little lower.

324 Q. Now, you understand my question to refer to the difference between the level of the island as it is now and as it was in 1837?

A. I think it was higher.

325 Q. How much?

A. In the early days when I saw it?

326 Q. Yes.

A. I should say a couple of feet, maybe more.

327 Q. How high is that above the river there now?

A. Well, I didn't make any estimate. I didn't take any look in reference to that.

328 Q. Which is the furtherest north, the red or white warehouse?

A. The red one.

329 Q. And the white one was furtherest south?

A. Yes, sir.

330 Q. The ferry started near the white warehouse?

A. Yes, sir.

331 Q. How far below?

A. I don't think much below.

332 Q. On the north or south side of the little creek?

A. I should say the north side of it.

333 Q. How far from the north side of the little creek?

A. I couldn't say exactly.

334 Q. Did you ever give much thought to the island afterwards?

A. Yes, I have.

335 Q. How came you to?

A. Well, the very fact of being on there necessarily—I can't explain the reason. The only reason was that I was there a good deal. In the early days, when I was in the Indian trade with Robinson, they camped on the island, and I used to be in their camp time and time again. That is what took me to the island. And afterwards, when I came to clerk there, I used to go in swimming there every day or two. If I got tired I would go over there.

281 336 Q. Where did the Indians camp on this island?
A. A little more in the southern part.
337 Q. Could they camp in the northern part?
A. I don't think so.
338 Q. Did they camp on there?
A. I don't think they did on the extreme northern part.
339 Q. How far below Fulton street did they camp?
A. On the lower part of the island.
340 —. How far was the distance from the little channel, which you call the head of Island 3, up to where the water commenced going north in ordinary stages of water? How many feet was it?
A. I should say it was; my judgment would be that it was 400 feet, about.
341 Q. Wasn't it 500?
A. It might have been.
342 Q. Is it your impression that it was nearer five than it was four?
A. No, sir; my impression would be—well, I could estimate it a little by the streets.
343 Q. There was no streets there, were there?
A. Mr. Campau has laid out this town——
344 Q. Didn't you testify in your direct examination, in answer to a question by the solicitor for the defendant, that you couldn't fix anything by the streets, as you didn't know where they were?
A. I say that now.
345 Q. How are you able to fix the extreme north point of that island?
A. Because I have been told here and heard it testified to that there is Oakes street and the next is Island and the next is Fulton. Now, I certainly can tell you where it is.
346 Q. I want to ask you from your memory as you saw it in 1837. Now how many feet was it from that place where the little channel crossed northwardly to where there was water again?
A. About four hundred feet.
347 Q. What would be the full width of it right through?
282 A. Well it is variable. It is wider at the south end than at the upper end. I would say that the width would be about two or three hundred feet.
Mr. CAMPBELL: From what point do you estimate that, Mr. Winsor?
A. That would be the middle of the island, about the middle of the island, I should judge about that; I am not very sure.
348 Q. Where did you start in to measure?
A. At the old channel.
349 Q. Where do you locate it now, with reference to those big trees?
A. The old channel?
350 Q. Yes? Between the islands; north or south of those big trees?
A. You mean——
351 Q. I mean the channel between the islands.

A. Between them two islands?

352 Q. Yes?

A. How do you locate what?

353 Q. How do you locate that with reference to those big trees that are standing there today?

A. Oh! it is south.

354 Q. About how far south?

A. Well, not very far.

355 Q. You say you don't know where Oakes street is. Do you know where the next street is south of Island?

A. I know there is a street there; I don't know the name of it.

356 Q. Well, it is Oakes street; there is no dispute about that. Now, you were giving an estimate of 400 feet. What did you intend to cover; what distance?

A. I intended to cover from the channel between them two islands and the upper part of that island.

357 Q. Do you know how far it is from Island street to Fulton street?

A. Well, no; I don't.

358 Q. About how far is it?

A. Well, I should judge, perhaps, four lots up north; 50-foot lots; that would be 200 feet.

359 Q. How far is it from Oakes street and Island, do you know?

283 A. Yes, I should say it was probably 200 feet; of course, I don't know that certainly. There is four lots in a block, and if it were 50-foot lots, it would be 200.

360 Q. Is that the same estimate that you used in giving this estimate of the length of the island?

A. Well, no; I should make that a little longer than that.

361 Q. In your estimating the island?

A. Yes, sir.

Mr. BUTTERFIELD:

362 Q. How many lots are there between Oakes and Island?

A. I don't know.

363 Q. What are the lengths of those blocks?

A. I don't know anything about it.

364 Q. What is the length of Pearl street and Island and Fulton?

A. I don't know, only to look at it.

365 Q. There is a point where Island street intersects the old channel and where Fulton street intersects it. Now, I ain't calling for your measurements by any streets. I am simply calling for your recollection of that island as you saw it. I understood you to say that that extended north of this little channel, as you saw it in 1833, 400 feet long and 300 wide?

A. I say it is a little longer than 400.

366 Q. It may be 500, may it?

A. It is possible.

Mr. CAMPBELL:

367 Q. In doing that you estimate the distance from Fulton street to Oakes street as 400 feet? Do you know where Mr. Butler's premises are?

A. I know where his house is. I always understood that these houses below there were his.

368 Q. What is the color of his house?

A. I think it is white; I ain't certain.

369 Q. Do you know where he lives?

A. Yes, sir.

370 Q. Do you know the ground lying west of that?

A. Yes, sir.

371 Q. West of this land to the present east bank of the river?

A. Yes, sir.

Mr. BUTTERFIELD:

284 372 Q. How long since you have seen Mr. Butler's house?

A. Yesterday—no, one day last week.

373 Q. You think it is painted white?

A. I don't know anything about it.

374 Q. If you can't swear directly to the color of his house; if you saw it day before yesterday, you can't swear to the color of the building that you saw twenty or thirty years ago?

A. I can say whether it is black, brown or red; I only saw his house a few times. That is all I remember of it.

BILIUS STOCKING sworn on behalf of the defendant.

Examined by Mr. CAMPBELL:

1 Q. What is your full name?

A. Bilius Stocking.

2 Q. Where do you live?

A. I live in the Sixth ward.

3 Q. The city of Grand Rapids?

A. Yes, sir.

4 Q. When did you first come to Grand Rapids?

A. I came first here a short time in May, 1834; I did not stay here a great while.

5 Q. How long did you stay?

A. About three weeks.

6 Q. How long before you returned here?

A. I returned in the fall of 1836.

7 Q. In the fall of 1836?

A. Yes, sir.

8 Q. How long did you remain then?

A. I remained until now.

9 Q. Lived here ever since?

A. Yes, sir; I have not lived in the city all the time, because there was no city here then.

10 Q. You lived in the territory of what is now the city?

A. Yes, sir; I settled just where I live.

11 Q. West of the river on the corner of Stocking street?
A. Yes.
12 Q. I will call your attention to the premises on the east bank of the Grand river south of Fulton street, between Fulton
285 street and the line of Oakes street. Are you familiar with those premises?
A. Well, I am pretty familiar with Fulton street.
13 Q. Do you know where Oakes street is?
A. Yes, sir.
14 Q. The second street south of Fulton street?
A. Yes, sir.
15 Q. Do you know where the steamboat landing is?
A. I used to know where it landed.
16 Q. I mean where it is today?
A. Yes, sir; I know where it is; I don't know what street it is on.
17 Q. How long since you have been down there?
A. I was there Monday.
18 Q. Did you ever go on what we call the island over by the steamboat landing? The steamboat landing is a slip there, is it not?
A. I think not; I don't think I went there; I think I went out on the main road.
19 Q. Where did you go?
A. I went clear down to the plaster mill.
20. Q. When; the other day?
A. Yes, Monday.
21 Q. Do you remember an island there in the river known as the Holmes island, or known as Island 3?
A. Yes, sir; I know where the island is; I never knew that they called it Holmes island; I did not know it by any name, but we just counted them.
22 Q. What did you call it?
A. I called it No. 3.
23 Q. Well, that is still there, the line of the island is still shown on this slip; west of the slip isn't it?
A. Yes, sir.
24 Q. Are you able to fix by any mark on the ground how the head of the island stood there in 1834 and 1836?
A. I think there is a mark there now, because it came out across there; there is land between that and the island above it, which we call five now, because I crossed it there, and there was land each side of where I crossed.
286 25 Q. How is it marked today?
A. The place between the islands?
26 Q. Yes.
A. It is marked—it is not filled all up; there is water in there; there was Monday.
27 Q. State whether or not there is a roadway passing from one of the islands to the other now.
A. Yes, sir.

28 Q. Did you pass over that?

A. Yes, sir.

29 Q. Now, state what the condition of that old channel is on each side of the roadway?

A. There is water in it, I suppose; out on a level with the top.

30 Q. State whether or not there is water in it east and west of the roadway?

A. Yes, sir.

31 Q. Now, when you first saw those premises in 1834, as to what there was north of this Island 3, back of Island 5?

A. I could not state particularly about that, because I did not examine that island as much as I did the other; I went down to see the river and I came back again; I think I rowed out to Pearl street in a boat; it was quite a small boat; I think that is where we landed, right at Pearl street or close by; then I didn't know anything about the river from that time until 1836.

32 Q. Now, in 1836 when you first went down there, state what there was north of this Island 3, the long island?

A. There was an island that always remained there.

33 Q. Can you describe it?

A. Well, that is No. 2; there is a channel between; we call them one because it was together. I guess there was a little water between them; I know there was when the river was up. We counted it right down the river; I suppose we counted that 2; I am very well acquainted with the place, because I was across the river, on the other side of the river; I went there in 1837 when I came to locate there; sometimes I was in Grand Rapids, and sometimes I was up the Flat river in the winter. That was in 1836 and 1837.

34 Q. Now, how wide was the channel in this year, in
287 1836, at the north end of Island No. 3, the big island, the channel running by there?

A. I am not so particular about that, for I never had much business down there, only to pass up and down; I was down there sometimes; of course I came up there; I would not think it was a very wide channel.

35 Q. State whether or not there was a channel at all there that you could see in 1836.

A. Oh! yes, there was a channel there.

35½ Q. Give us your best recollection of the width of it at that time.

A. I should judge when there was very low water—I don't remember seeing it when it was very low—I should judge it would be from twenty, may be as much as thirty-five feet wide; possibly forty.

36 Q. What was there north of the channel?

A. There is an island there, and water came up there. I ferried there a good deal, but not right at the line of the next island above.

37 Q. Now, describe this island north of the channel?

A. Well, there was a quantity of land there; I think it was about the same width.

38 Q. How far north did it extend with reference to the present line of Fulton street?

A. Well, I could not tell there; I could tell that easily enough if I could tell where the red warehouse stood; the ferry was immediately below; probably to take a straight line across the river it was fifty feet below the end of that lower warehouse; that is, the lower warehouse, I mean up here, before they built any below there.

39 Q. Where did the warehouse stand that you are speaking of?

A. I should think it stood about pretty near the upper side of Fulton street; that is my opinion about it. Well, take a line straight across; you know it runs a little down, and we always ran right close to the end of the island.

288 40 Q. Starting from where?

A. Well, say twenty feet below the warehouse, I guess.

41 Q. That is your recollection of the location of this building?

A. Yes, sir.

42 Q. The building stood on the north line of Fulton street about——

Objected to as leading.

43 Q. What is now Fulton street?

A. Yes, sir.

44 Q. And the ferry, you say, started about twenty feet below that?

A. Well, we did up there; if we had a small boat we might run close up.

45 Q. Did you have a landing wharf for the ferry?

A. No, sir; we had it just so we could run the scow up there; I never landed at the wharf; that was before.

46 Q. If I understood you, you say, starting from that place where you usually landed with the boat, and going straight across the river, you passed just at the head of this island?

Objected to as leading.

A. Yes, sir; if I had a boat I always passed right by the head of it.

47 Q. How many islands were there below the place that the ferry crossed?

A. There was one that came up to it, and the one that the large channel was between, and there was the Robarg island, we called it, and it seems to me there was another one.

48 Q. Where did that lay, the smallest one?

A. I think it was the last down, way down.

49 Q. And that was there before that, the island that you have described; the one that you call No. 1?

Objected to as leading.

A. There was an island up there; I believe it was numbered 1 and 2; both above there. When I came here in 1836 there
289 was a saw-mill and dam built across there, across the chan-

nel of that Island 3; the saw-mill was there, and the little building used there—folks living in there.

50 Q. What was there in the way of a channel between these two islands?

A. Between these two islands?

51 Q. Yes, sir.

A. Well, I should judge, if my recollection—I won't be so positive about it—I should judge it must have been 100 feet before we got to the other island; still, there was a sand bar that run all the way across in low water, so I could not run that scow.

52 Q. Now, this upper island was divided into two or more parts by a channel?

A. Yes, sir.

53 Q. Which way did the channel run?

A. Pretty much down the river.

54 Q. North and south?

A. Yes, sir.

55 Q. And those boats would go across?

A. Well, yes; when it was high I could not maybe get onto the island at all.

56 Q. How far was it between that upper island and this one that you used to cross in that way?

A. I say it is my impression, about a hundred feet.

Adjourned until 10 o'clock tomorrow morning.

GRAND RAPIDS, MICH., *May 1st*, 1890—10 a. m.

BILIUS STOCKING again on the stand.

Direct examination resumed by Mr. CAMPBELL:

57 Q. You came here in 1836?

A. Yes, sir.

58 Q. And have you been here ever since; this has been your residence?

A. Yes, sir.

59 Q. How much of the time in the early years, 1836, 1837 and 1838, did your business call you onto these premises?

A. Very often.

60 Q. What was your business then, say 1840?

A. Well, my business was clearing up my place where I lived mostly; I was some of the time on the river, a little, but not doing much.

290 61 Q. Did you at any time run the ferry?

A. I run the ferry; I think it was in 1844 or 1845.

62 Q. Now, you ran it with reference to the building of the bridge.

A. I ran it until the bridge was built; yes, sir.

63 Q. Where was the bridge built in those years?

A. The bridge was built on Bridge street.

64 Q. On the present line of Bridge street?

A. Yes, sir.

65 Q. Then the ferry ceased?
A. Yes, sir.
66 Q. You operated it during those last two years?
A. Yes.
67 Q. And the bridge was built in 1845 and 1846?
A. I think it was; I would not be positive about that.
68 Q. Somewhere along there?
A. Yes, sir.

COUNSEL: I think the date has been fixed.

69 Q. While you were running the ferry during those two years what was the custom as to running; how was it carried on? Was it run every day?

A. Yes, sir; it was run every day, except there was a little time I ran it; I only ran it one spring, because the bridge was built in the fall; there was ten days I did not cross, I believe. The business of the ferry—there was seasons of water when you could not run at all; there generally was quite a season, but in that year there was one ten days; I don't recollect, as the water was so low I could not run the scows that season; I have seen it so low that I could not get across there and had to ford.

70 Q. Where was the line of the ferry in these years that you ran it?

A. Well, it was——

71 Q. (Interrupting.) Where did you start from on this side?

A. We started, I should say, from about half way between the lower warehouse that was there; there was no warehouse below that; I believe that is the red one; that is my opinion about it.

291 72 Q. Whose warehouse was that?

A. I don't know who built it, but Mr. Campau occupied it.

73 Q. Do you know where Mr. Campau lived in the early years, where his house was?

A. Yes, sir.

74 Q. Where did it stand, as near as you can locate it?

A. I cannot locate it now, I declare, it has been changed so much.

75 Q. Is it on the east or west side of the river?

A. On the east side. I can tell you where he lived when I first came here.

76 Q. Well, where did he live?

A. He lived in what is called the Rathbun house; he built that house.

77 Q. Where is that?

A. That is where the Widdicomb building stands now.

78 Q. The Rathbun hotel?

A. Yes, sir; that is where he lived when I came here in 1836.

79 Q. Well, Campau occupied this lower warehouse, did he?

A. Yes, sir.

80 Q. Now, with reference to that, where did the ferry start from?

A. I think the scow landing was probably about thirty feet south

of it; we landed the skiff—well, I ran clear up to the barn, the warehouse, or ran a little further up there.

81 Q. Did you cross on that ferry before you ran it yourself?

A. Yes, sir.

82 Q. With reference to the former landing, where did you run?

A. I don't recollect exactly.

83 Q. With respect to the old landing. I mean with respect to the line where the ferry ran 1836, 1837, and 1838?

A. Well, it ran in the same place.

84 Q. Then, you were passing, during the seasons when the ferry ran there in the summer, you were passing this island in a boat every day?

Objected to as leading.

A. Yes, sir; a good many times in the day.

292 85 Q. Have you ever been on this Island No. 5?

A. Yes, sir.

86 Q. Were you there in the early years?

A. I never explored it to recollect it; I have seen, of course, the island every day when I was along there, but I don't remember of ever going over it.

87 Q. Now, you have spoken of the channel that was down below the three trees that you observed the other day; the old line.

A. Yes, sir.

88 Q. State whether or not in 1836 and 1837 there was an island extending from that channel north as far as the present line of Fulton street.

Objected to as leading.

A. I could not say exactly where the line of Fulton street is, it extended up as far as it does now; I think the island ran upstream as far as it did before it was changed, so I cannot say where it is now.

89 Q. You can't trace the channel now exactly at all places?

Objected to as leading.

A. Well, the idea I was getting at is this: All of the landmarks and buildings is moved on this side of the river, and on the other side, too; consequently I cannot say positively as to the character of them. I know where the upper end of the island was—where it is now; it was there then.

90 Q. The north end of it?

A. Yes, sir.

91 Q. Did you go to the point when you went down there the other day, clear up to the bridge?

A. I came clear up to the bridge.

92 Q. You came along up the island as far as Fulton-street bridge?

A. Yes, sir.

Objected to as leading.

93 Q. Well, state how you found it along the present east bank of the river, as it lies today, from the channel between the
293 islands up to Fulton-street bridge, compared with the island as you knew it there in 1836 and 1837?

A. Along that same line?

94 Q. Yes.

A. Well, that is altered somewhat; that is where the channel was and the old bank is now, and so much filling been done it is pretty hard to tell how it does look. I can see the position of the old channel there, and that is running down the river; I can see where it was enough to discover it there, but to say just where the old bank was above—well, above the foot of the island, we will say—I cannot define, cannot say where it was, because there has been so much filling done there and filled up so much, I could not tell just the distance between the island and the main shore.

95 Q. That is not what I am asking you to do. I don't suppose any one on earth can do that. Did you discover there, immediately south of Fulton street, any trace of that old channel?

A. Oh, yes; yes, sir.

96 Q. Where and what is it?

A. Well, where it has been filled up, I would not be positive, but I think I can see the water in the old channel now; I am not positive about that, althongh on the outside of the west side of the island, I should think, from the appearance of it, that the water would actually come in a little off of the bank down towards the lower end of the west side of the island; that is my impression, that the appearance of the trees there, and there is one particularly, the lower one, that appears to me the water has washed the dirt away from it so that it stands partly down into the water, like.

97 Q. That is towards the south part of the island?

A. Yes, sir; the south part..

98 Q. In 1836 and 1837 how wide was the island that was in there, at the north part of it?

A. Right at the immediate north end, of course, it was not so wide as it was a little further down.

99 Q. Did it run to a point up there?

294 A. Not entirely; not so much, I think, as it did; it did at the lower end. There was always room enough to go through with a skiff or anything of that kind close to the island, because the water whirling around kept the sand out; it was always a deep place in there.

100 Q. At the north end of the island?

A. At the north end; yes, sir. I have seen the bar up there so that we could not get over it with the scow.

101 Q. Up above the Bridge-street bridge you had a free river; you have been by there and made an examination? Is there any mark there or anything with reference to which you can locate the north end of the island, as you knew it in 1836 and 1837?

A. Well, there is a brick building there, a large one. I don't know what it is; it appears to be a livery stable, and I would say it was very near it.

102 Q. Which way is that building from Fulton street now?

A. Below it.

103 Q. North or south?

A. I could not tell exactly; I think it is south; it may not be just exactly south.

104 Q. What is the building used for?

A. I don't know; I never was in it; but there appeared to be manure around there, as though it was used for a stable.

105 Q. On the west part of the stable there is manure thrown back, is there?

A. Yes, sir.

106 Q. You think the island—the north end of the island as you knew it in 1836 and 1837, came up to about where this brick building now stands on the east bank?

A. I should judge so.

107 Q. That is your recollection of it?

A. I will not be positive about that.

108 Q. You never explored the island in those early days?

A. I don't recollect of ever going over it.

295 109 Q. Do you remember when you first went over the island?

A. I don't know as I was ever over it until last Monday.

110 Q. I mean over the whole surface. I thought you said you had been over it before?

A. Very likely I had gone on the island, for I used to get around there sometimes; I have no recollection of ever going over it or any of those islands; yes, I recollect of going on the island, one of the lower islands, once; I went down in a steamboat with a Sunday-school class one 4th of July; I think it was on Sunday, and we got aground, and had to get out and pass over the ground, so we got onto the island and then onto the main shore.

111 Q. Describe the surface of the island as you knew it in 1836 and 1837 with reference to the timber and bushes and vegetation of any kind.

A. I believe there was a good deal of small stuff and willows; there might be other small trees, but there was some large trees; I should judge some three large trees, and it is my impression that some stood near the east bank of the island, towards the lower end; there is none there now.

112 Q. How far towards the north end did those things grow in 1836 and 1837?

A. Well, I should judge there was some on the north end; I think there are three there now; I am not positive about it.

113 Q. How much were you down there after you left the ferry?

A. I have not been there but little since I left the ferry.

114 Q. You ran the ferry, you say, two years?

A. Yes, sir; nearly two years; I began in the spring and ran it that season of the year, and then I guess when the bridge was so we could cross I stopped.

115 Q. Do you know where Mr. Butler's property is on Waterloo street?

A. I do not.

116 Q. Lots five and some other lots?

A. No, I never had them pointed out to me.

296 117 Q. Do you know the property on the Bryan and Ball addition on Waterloo street, between Ellsworth avenue and Fulton?

A. No, I believe not; I have not been down in that locality enough to know where anybody owns since the bridge was built, as I know of. I have been along down to the boat landing when it was down below; used to go up and down the river sometimes with a steamboat; I didn't know who owned the property.

118 Q. Did you ride much in the steamers that used to run in here?

A. Not very much.

119 Q. Did you ever ride on them?

A. Yes, sir.

120 Q. Where was their landing at that time?

A. If they could get up it was by the wharf back of the warehouse, but if it was low water they had to go down near where the landing is now.

121 Q. Well, how much of the year could they come up to the wharf or near the warehouse?

A. Well, they could not without the water was in a higher stage than it is now in the river; I have known the steamer to run up to Ionia.

122 Q. I am speaking now of the running through of this east channel, east of the island.

A. There was some years that they could run up, because some years we had high water in June; that was the year the ferry first began.

123 Q. You mean 1845?

A. Yes, sir; they could run up a small bit, because that is the reason they could not do much with the bridge; they had high water so often; I think it would run up all summer; I ferried all summer.

124 Q. Have you at any time seen all the islands there overflown with water?

A. I think I have; I am very confident of that.

125 Q. How high have you seen the water on the bank or east of the old east channel? Have you seen that bank overflooded in early years?

A. I don't know, but there might be a little road right
297 along next to the channel that was not overflowed, but I think I have seen it all overflowed; I know I have seen the flat overflowed where the Union depot is.

126 Q. How wide was this island generally in 1836 and 1837?

A. I should judge—my opinion is it was about a hundred feet; but still that is only an opinion.

127 Q. You are not stating from any memorandum?

A. No, sir.

128 Q. And about how wide at the northern point?

A. I should judge it was pretty—well, starting at this little point and going down the road, I should judge it was over a hundred feet.

129 Q. Do you know where the Barnard house is today?

A. No, sir, I do not; I used to know where it stood.

130 Q. When did you notice this brick building?

A. Monday last.

131 Q. Reflect a moment as to the location of that and say whether it is north or south of Fulton street, if you can.

A. It appears to me now, as I am here—I cannot say positive—but it appears to me that the brick building is south of Fulton street; I may be mistak-n.

Cross-examination by Mr. BUTTERFIELD:

132 Q. What is your age?

A. Well, sir, if I live to the 12th of next month I will be 82.

133 Q. I understand you that from 1836, when you came here, to 1845 you engaged in working your farm in what was then the village of Grand Rapids?

A. Yes, sir.

134 Q. You were breaking it up and cutting off the timber?

A. Yes, sir; I had to cut the timber off before I could break it up.

135 Q. In 1845, I understood you to say—you went to work at this ferry in 1845?

A. I think it was in 1845; I would not be positive about that; it was about that time.

136 Q. Well, can't you fix it with reference to the time that
298 the Pearl-street bridge was built, or the Bridge-street bridge?

A. I can fix it as to the time the Bridge-street bridge was built; that was the spring of 1846 that I commenced work on that.

137 Q. How long did it take before the completion of the bridge?

A. I think we had it completed in the next fall; I was two seasons there.

138 Q. Did you stop running the ferry when the bridge was completed so they could cross?

A. Yes, sir.

139 Q. Do you remember when you commenced running the ferry?

A. I know it was in the spring of the year; I don't know exactly what time, but I guess in the spring of the year.

140 Q. Do you know the upper islands in the river, 1 and 2?

A. Yes, sir.

141 Q. How far did you ferry—which was the lower of these, 1 or 2?

A. There is not much difference in them. I don't know which you call 1 or 2. It appears to me that the first one ran down furthest; I won't be certain about that.

142 Q. How far was the lower end of the western of those two islands above the point where the ferry started?

A. I could not say that exactly; that is a great while ago, as I stated yesterday. I think it was about in the neighborhood of 100 feet; it may be more or less, but the most I have to guide me about is that Campbell had a store up near where Pearl-street bridge is, and that was up by the upper end of the island, if I recollect right.

143 Q. You passed the lower end of the island every day as you went—you passed the lower end of Island No. 2 every day as you went across the river?

A. Yes; I passed frequently between the two islands.

144 Q. You saw that island every day as you went across?

A. Yes, sir.

145 Q. Now, can you tell me how far the island was north of your starting point?

299 A. I cannot, because it was only—now, if I knew how long the wharf was there I could give you a pretty good idea about it.

146 Q. Ain't you troubled with the same indefiniteness as to the whole matter? How long since you have thought of it, Mr. Stocking?

A. Great many years.

147 Q. Now, are you able to give any precise account, which you are satisfied is precise, as to the situation of things down there?

A. As to the buildings now I cannot give, because the buildings are gone. As to what this island is, of course, I know a great deal more about that than I do any of the rest, for there was my daily work for two years.

148 Q. With reference to this other island, wasn't there two?

A. Yes, sir; but I had no call to have anything to do with that. I had to run by the other island all the time; that was my guide; when I came in the dark that was my guide to start from the other landing to the head of the island.

149 Q. Now, did you, in going across—did you go straight across?

A. I think it was a little angling, as you went that way down the stream.

150 Q. Where did you land on the other side of the river?

A. I cannot tell that because the marks are all gone there; I landed then just exactly where the road went, and what we call now, or, at least, what we used to go down to, where this plaster mill was.

151 Q. How was it with reference to the Mission church?

A. It is there now.

152 Q. No. the Mission church that stood there before; do you know anything about it?

A. Yes, sir.

153 Q. How was it with reference to that, north or south?

A. Well, it was east of it and along west; it was just exactly—we landed on the road that led to that.

154 Q. Was the place where you landed further up or down than the Mission church?

300 A. I should judge it was a little further up, because the road there rather angled as it went along the river to go to the Mission church.

155 Q. About how much further up was it than the Mission church?

A. No further up; the roads ran—it is pretty hard to tell just how far up, when the river is coming right around and currents run in there, but the roads ran a little southwest; that is where the road ran; I know where it ran because I laid that road out.

156 Q. When you went across there did you use a pole for the ferry?

A. Yes, if I went on the scow I had a pole, and if it was too deep I had to use oars; I always used a scow if we had to take a number.

157 Q. Where was the current strongest?

A. I rather think the currents would probably be the strongest on the east channel.

158 Q. The east channel?

A. Yes, sir.

159 Q. How was it about the—what was the width of that east channel?

A. I never measured, but it was a narrow channel; I should judge not over a hundred feet anyway.

160 Q. How wide was the main river?

A. The part of the river was probably—it may not have been more than a hundred feet; I should judge the main part of the river was certain three times as wide as that; I don't know but more.

161 Q. Now, you spoke—where was this red warehouse? Do you know whether it was known as the Godfroy warehouse at any time?

A. I think it was called that, yes; but Campau occupied it when I was ferrying.

162 Q. He was an Indian trader, was he not?

A. Yes, sir.

163 Q. How far below the warehouse was the little creek that ran in there?

A. That is a pretty hard thing to tell; I know it was near the red warehouse, but my work did not call me to the creek at all.

301 164 Q. You saw the creek every day, did you not?

A. No, sir, I did not see it for many days; I never paid any attention to it.

165 Q. It was right there, wasn't it?

A. Where the ferry landed?

166 Q. Yes, sir?

A. No, sir.

167 Q. How far south was it?

A. I should judge it was further south than the width of the east channel.

168 Q. What portion of the time during the time you were ferry-

ing was the river navigable for steamers so they could get past the Campau warehouse?

A. I think it was navigable all the time for the first summer.

169 Q. How was it after that?

A. The second season?

170 Q. Yes, sir?

A. I don't recollect distinctly about that; I know the water was so high that it bothered us very much about ferrying it, and we used oars a good deal of the time in the place of poles; of course the boats were small boats.

171 Q. Now, during the time you were acquainted with the river was it not a fact, except in high water and exceptionally high water at that, boats could not go up—the steamers—as far the Campau warehouse, and had to land below it?

A. I know that.

172 Q. That is a fact?

A. Yes, sir; but I say that season I don't think it was a fact.

173 Q. That season was an exceptional season?

A. Yes, sir.

174 Q. Pole-boats such as were used by you and the Indians, and in trading could get along that channel, couldn't they?

A. Yes, sir.

175 Q. That was the mode of navigation when you first came here, wasn't it?

A. Well, the pole-boats could go into the channel at any time if they weren't too deep. Now, what we call Mackinaw boats was the only thing that ran when I first came here.

302 176 Q. And sail-boats of a light draft?

A. Well, they could have a sail if it was wanted, and if not—when it was not wanted they rowed them with oars.

177 Q. Have you looked at any maps or charts to refresh your recollection as to the situation of the island?

A. Yes, sir; I have looked at the map.

178 Q. When did you?

A. I looked at it day before yesterday.

179 Q. Who showed it to you?

A. I don't remember; it was in the office.

180 Q. Mr. Heath, wasn't it? Whose office was it?

A. I suppose it was in the railway company's office.

181 Q. Did that map refresh your recollection?

A. No, sir; I don't think it did a bit; I think that map showed me just as I told the men that was with me. Says I: "I can tell if I see a map, I can tell whether it is right by looking at it, and I think the map is right."

182 Q. You looked at it?

A. Yes, sir.

183 Q. Do you *you* know what map it was?

A. No, sir, I did not.

184 Q. Was it here? Have you seen it here?

A. No, sir.

185 Q. Have you not seen it on the trial?

A. Well, I am not sure about that.

186 Q. Who went with you to look at the premises?

A. Mr. Heath came up and got me.

187 Q. Did he tell you what the railroad company claimed on that strip?

A. He told me that he claimed the upper island; that is all he told me about it.

188 Q. Was it pointed out to you, the channel that you said you found, the north channel of Island No. 3?

A. I don't know as it needed anybody to point it out; he drove me across there.

189 Q. I know it didn't need anybody, but who did point it out?

303 A. He did—well, I don't know—when we got on to that we stopped, and I presume he said, "There, you see that channel." I do not know whether he said that or not.

190 Q. Now, the old channel is just about opposite the causeway that is built from the head of the steamboat basin; isn't it about opposite that, as near as you recollect it? Do you remember—there is a road and embankment running above the steamboat landing; do you remember that?

A. Up along there?

191 Q. Yes.

A. I remember that; yes, sir.

192 Q. This channel that you speak of was just about west of that, wasn't it?

A. I think not; I think that is lower down; you mean where the steamboat landing is now?

193 Q. I mean an embankment north of where the steamboat landing is now; north of the steamboat basin where the little boats land?

A. I don't really recollect how that was.

194 Q. Do you know where Oakes street is?

A. I don't know where it is down there anyway.

195 Q. You found the lower end of the island occupied, didn't you? The whole space that you call an island was occupied, wasn't it, as near as you could judge?

A. The landing?

196 Q. Yes, sir.

A. Well, it is occupied with dirt.

197 Q. Isn't there an old yard down there and some little factory of some sort?

A. I cannot say.

198 Q. A little steam apparatus'

A. On the island?

199 Q. Yes, right by those trees.

A. I cannot tell you whether there was or not.

200 Q. The island was filled up clear to the water's edge, was it not?

A. It may be.

201 Q. A little to the west?

A. I think it is not filled any to the west at the lower end.

304 202 Q. I ask you about the whole of it, if it is not filled out on the part towards the center part very near to the west side of the island, what you call the island?

A. Oh, yes, I think it is.

203 Q. How high is it filled above the level?

A. I know it is filled up a good ways, because some places where we drove along it is away up.

204 Q. About how many feet would you judge?

A. Well, I should judge it is filled up—that is not what I was looking at.

205 Q. About how many feet was it filled up, do you know?

A. No, I don't.

206 Q. Can't you tell about?

A. Well, yes, I should judge it was filled up some places about four or five feet.

207 Q. Isn't it filled up nine feet there?

A. I don't think it is; it may be it is; that is not what I was looking for; I was merely looking for the island.

208 Q. Now, did that little channel—how far north of what you call the island did that channel run; how many feet at the time you saw it first, in 1836, how far north; how many feet north did it run?

A. How far north from the channel?

209 Q. Yes, sir.

A. I guess, in my opinion, it was about a hundred feet.

210 Q. North of the channel about a hundred feet?

A. The channel at the lower end; that is my opinion; it may be further, and it may be less.

211 Q. What was the character of the surface of the island? Where was the highest part of it?

A. I should judge it was very near level; that is my opinion about it.

212 Q. Whole of it?

A. Well, no; the east side, I should think, towards the lower end, was lower, but the west side, I should judge, was very near level right through.

213 Q. Calling your attention to the point where the trees were?

A. Yes, sir.

305 214 Q. Was it higher there; did it recede; did the surface of the island recede north of where the trees were?

A. I don't think it did; some of the other witnesses gave it as their opinion that it did, but I don't think so; I should judge it was very near what you might call the grade of the river; the river went pretty fast all along there.

215 Q. You speak of seeing a depression in the surface and willows there next to Fulton street?

A. Next to Fulton street?

216 Q. Yes, sir; you speak of some willows?

A. There are willows; if I recollect right, there are willows on the east side of the island, and more or less all the way along.

217 Q. Now, calling your attention to certain willows which you mention that appear right next to Fulton street as you look down, the first thing you see was the willows?

A. Yes, sir.

218 Q. How high is the bottom of that depression above the bottom of the river, about?

A. I don't know.

219 Q. Are you able to form a judgment?

A. No, sir; I am not, because I gave no notice to see how high it was.

220 Q. In starting from the ferry didn't you go north to get out between those two islands?

A. Starting from the ferry?

221 Q. Yes.

A. No, sir.

222 Q. You didn't?

A. No, sir; didn't go up north.

223 Q. You didn't at any time change your direction towards a point which was north in line with the Mission house, except as the current might bear you further south?

A. Well, sir, the current there seldom took me any south. I will tell you all about that. I want to get the story. I could run that scow across there alone, and loaded within two inches of the water, so that the top would be that near the water. I took it over one Christmas. I took two loaded teams and three Indians across
306 to the Mission house, and took a good many other white men in it. They wanted to use the poles and I told them, "No, you all take your places and I will start; I don't want anybody to touch a thing until I land there." And I took them across, never wiggled, never went down a single inch only what I wanted to get to the shore.

224 Q. How much did you angle down to get to the landing where you started? To get to the landing you were steering for?

225 A. As you take the current of the river, I probable went down ten rods; I don't know as I did that much. In coming back, if there was any ice in the river, I could shove that scow across, and I could go as straight as some would run the rope ferry, because I knew how the current ran, and I knew how to hold the scow and the direction of its course.

226 Q. Of course you used the current to propel your boat across the stream?

A. If there was no ice there; yes, sir.

227 Q. I understood you to say that you had never been on Island 5?

A. I don't know as I ever did until last Monday.

228 Q. Now, there is nothing there to show an island?

A. Well, yes, where the island was. I could see the trees; they didn't grow in the river, or since the land was built up.

229 Q. In other words, you judge from what you see there now that there was an island there some time?

A. I know there was.

230 Q. After you left the ferry there, I understood you to say that you had little or nothing to do with the river, and that your recollection had not been called to it specifically since that time until the other day?

A. I was up and down until that time to Grand Haven sometimes, but then my attention was never particularly called to it.

307 231 Q. I understand you to say that you didn't go up and down on the steamboat very often?

A. No, sir.

232 Q. Took no special notice of this at that time?

A. No, sir; I did not.

Mr. CAMPBELL (showing witness paper): After looking at this map, Mr. Stocking, I show you this map, the Defendant's Exhibit 2, the first map there, the northwest front of the township and river. I will ask you if it was not myself that showed you this map the other day?

A. I think it was

233 Q. And in the room adjoining this court-room?

A. Well, it was in there, right in there; yes, sir.

234 Q. State whether or not you ever asked me to look at the map.

A. I don't know whether I asked you or Mr. Heath asked; I told him if I could see the map I would be able to tell whether it is right or not; if I could see the map I could tell how the island looked.

235 Q. Look at this map now, and the river, showing the islands, and say if that is the one you looked at in the room here the other day.

A. Yes, sir; here is the island in question, the one that we are talking about; I think it looks natural enough, only it might been around here a little more, as I have it in my eye; that is the locality of those islands; they look right, but as to the distance there; I don't know but that is two or three hundred feet, and I cannot tell myself as to that.

236 Q. Between this Island 5 and the island above?

A. Yes, sir; I don't know how far that is.

237 Q. Look at the ferry landing there.

A. Now, the ferry landing was right here; we went in here and we went a little down, a little south; that is all I can tell about it.

238 Q. Does that represent the ferry landing and the island as you remember it when you were there?

Objected to as leading.

308 A. That is as well as I can see it in my head; it all looks natural and right. I have a map at home, and that shows the two islands here, and the whole town in 1832, figures taken from a sketch that was made by the marshal here in 1832; that all looks right with my map at home.

239 Q. You mean it looks right as you recollect it?

A. Yes, as I recollect it.

240 Q. Now, did you walk along the island, and along the present east bank of the river, between this lower channel south of the trees there by Fulton street?

A. When?

241 Q. Monday.

A. No, I didn't walk at all; I rode down; I don't remember what way we went down exactly. I know we got on the main bank and went clear to town; I don't walk much myself; we went down to Silas Godfrey's plaster mill; he said it was a nice road, and we would take a little ride, and we were not going to look at anything.

Mr. BUTTERFIELD: Robarg; did you ever hear of that?

A. Yes, sir.

242 Q. How much is there in there of that?

A. I cannot say.

243 Q. How much is it below?

A. Below No. 3?

244 Q. Yes.

A. I should think it was—I cannot tell you that; down some ways; I have seen that island very often.

245 Q. How large an island is it?

A. It is my impression it is larger than the one that you are lawing about.

246 Q. How much larger?

A. It is a pretty hard thing to tell when I have not measured and taken no pains to measure it; I have looked at land a great many years; I might give you an estimate.

COUNSEL: We object to any statements by the witness not responsive to any question.

A. Well, I want to show how I make up my mind of a thing when I look at it. I am accustomed to describing land and looking at it. I generally have some lines that guide me, and I pace it; there is another thing——

309 COUNSEL: I object to the witness stating what is not responsive to any question.

The WITNESS: Will you please ask me this question. Now, I expressed to Mr. Butler, and I think now that there was down there somewhere below my ferry a little brush—what I would call a brush island in low water—and there was willows growing on it; it was made by something getting in there; I don't know whether it was an old root or what. It is my impression that there was such a thing in the east bank; it is my impression now, but I could not see anything of it when I was down there the other day, because it was filled up——

Mr. BUTTERFIELD: Well, that is all.

Mr. CAMPBELL: I want to ask you about the distance. You have stated that, as I understood your answer, that this island ran about a hundred feet north from that channel.

A. I should judge so; I took no particular pains that day to estimate it.

247 Q. Do you know how far it is from Island street to Fulton street?

A. No, sir; I do not.

248 Q. Do you know what the distance is from Oakes to Fulton street?

A. No, sir; because I have never had any call to go to them places; I have never enquired the distance. Probably I could estimate it if I could walk, as well as any man could, without a chain.

249 Q. You never made any measurements of this Island No. 5 at all?

A. No, sir.

SELDEN E. TURNER sworn on the part of the defendant.

Examined by Mr. CAMPBELL:

1 Q. What is your full name?

A. Selden E. Turner.

2 Q. You reside in the city of Grand Rapids?

A. Yes, sir.

3 Q. You have resided here how long?

A. I came here with my father in 1832, August the first.

310 4 Q. How long did you remain then?

A. I have remained here ever since to the present hour; this is my home.

5 Q. You have lived here since?

A. I have been away a few months at a time.

6 Q. How old were you when you came here?

A. I was born in 1828, May 25th, so it would give me from May 28th—put me in my seventh year.

7 Q. Were you here during the years from 1832 to 1840?

A. Yes, sir.

8 Q. What were you doing during those years?

A. That would be a pretty difficult matter for me to tell.

9 Q. Well, generally; were you in any occupation or going to school?

A. I think I went to the Indian school about two summers.

10 Q. Where was the Indian school?

A. Up at the Baptist mission.

11 Q. West of the river?

A. The west bank of the river.

12 Q. Where did you live during those years?

A. I boarded with the missionary; that is, we boarded with them.

13 Q. Did you go home nights?

A. No, sir; oh, no.

14 Q. I call your attention to the premises between Fulton and Oakes streets, along the present east bank of the river. Are you familiar with that locality?

A. Yes, I have been up and down there, perhaps, thousands of times; on boat, however.

15 Q. When have you been on these premises last?

A. I was on them last night after court adjourned here.

16 Q. What islands, if any, were there when you came here in the summer of 1832 between the present line of Fulton street and, say, Wealthy avenue on the south?

A. What we call the Holmes and a portion of what we call No. 2 island; that is, the one we are speaking of now.

311 17 Q. It was known then as No. 2?

A. That was what we called it at that time.

18 Q. And what islands were there north of the present line of Fulton street?

A. The one we called No. 1.

19 Q. State how large that No. 1, the upper island, was.

A. I could not exactly tell you the direction or course along there; I can tell you where it ran to; Pearl street ran across the north end of it; if my recollection serves me right there was a point on the island about on the north side of Pearl street, from 50 to 60 feet north, in a small point; of course, as you came this way the island grew wider.

20 Q. That is south?

A. Yes, south, down the river, on the south side of Pearl street; it might have been 150 feet wide; there was this small part of it that projected above Pearl street; then it extends down to its present terminus, where the railroad runs across.

21 Q. Were you on any of those islands in 1832 and 1833?

A. Yes, I can tell you about that. I went in there a thousand times.

22 Q. Were you there frequently during these years?

A. To give you an idea, when I was going to the mission school——

(Counsel for the plaintiff objects to the statements of the witness not made in response to the question.)

The WITNESS: When I was going to the school at the mission, there was very few of us here at that time, no children, and it would be natural, you know, as we were with the Indian children there, to go with the Indian boys for associates; had no other associates, nobody but my brother Albert, who is dead; and most of the boys that went there, after the school was out, the Indians would take us all around on the islands in their canoes; we were in amongst them. That is the way; I wanted to give an explanation of how I was onto these islands.

312 Mr. BUTTERFIELD: We ask to have that stricken out as unresponsive to any question, and incompetent, immaterial and irrelevant, as to the witness' statement as to what would be natural.

23 Q. Now, go on, Mr. Turner, in your own way, and describe the situation and extent of these islands, as you first saw them in 1832; take the Holmes island, for instance.

A. Well, that is the largest island of any of them; that is an island; as a general thing, take the islands together, it is the high-

est island; the west bank of the Holmes island is quite prominent the whole length of it; that is down to the West Michigan road. Now, across and below there, there was a point or sand bar; water naturally came in on the point from the—I want to show you the way this was—from the main channel west, and it would strike it there. I see the city has filled up quite an amount; the length of the island, within six, ten or twelve feet, maybe less than that.

24 Q. Are you able from any marks——

The WITNESS: Let me go on, now, please. The east side of the island was not so prominent; the island from where the east channel—exit of the east channel—now, the main channel, was lowest at that point, and then, as we come out, we come out in the rounding circle and towards the eastward, to where the old storehouse now stands, where they come with their steamers; that was about the widest there is in the island. This shore commences to run and runs to a rounding point a little above: the round point comes above and projects by Island No. 2, and then backs around. I don't think the upper end of the island, as I looked at it last night after court adjourned, to satisfy me, I don't think the upper end of the island is a foot from where it was years and years ago.

25 Q. That is the Holmes island?

A. Yes, sir.

26 Q. Are you able, from any present marks or lines,
313 to locate the north end of the island as it stood in 1832?

A. Yes, sir. Well, what would be the centre of the north end of the island proper, in the circle, it stood, I should say, 75 or 100 feet—75 I will say—from coming against the base of Island No. 2, on the west side of Island No. 2. Taking that as a starting point to start from, I should think the upper circle, the extreme point, would be 75 feet from Island No. 2, westerly.

27 Q. Now, with reference to the present line of Oakes street, there is a roadway and building up there, about on the line of Oakes street, is there not?

A. Well, there is some filling there.

28 Q. Filling onto the island used as a driveway?

A. Yes, sir.

29 Q. In reference to that line, where was the north end of the island in 1832?

A. The north end of the Holmes island?

30 Q. Yes, sir.

A. Well, Oakes street; I should say the north line of Oakes street parallel would project onto the island and leave a little strip of the island to the north of it; I could not be positive how many feet. It would leave a little there; whether it was 25 or 5 feet, I could not say exactly.

31 Q. Do you know whether there was a channel in 1832 between this Holmes island and the one that you call No. 2, lying to the north of it?

A. There has been a channel up there within the last—well, up to the time they excavated there; it might be 20 or 25 years; any-

way, it was until they made the excavation, cleaning out this lower channel; that was the cause of the channel's being stopped.

32 Q. How wide was the channel in 1832?

A Well, I should say 25 or 30 feet on the top surface, probably 20 feet on the bottom surface.

33 Q. When you were there a few days ago did you dis-
314 cover any trace of the old line of the channel?

A. Yes, sir.

34 Q. Where is it?

A. The old line of the channel runs right along upon the circle of the No. 2, and runs between that little small island just west of it; runs down in here—I could take a paper and make a little diagram of it, if you wish.

35 Q. Locate it with reference to the line of Oakes street.

A. Well, where this exit of this channel through into the east channel, just about where the north side of Oakes street would be—or, no, excuse me—the south side of Oakes street.

36 Q. Now, you speak of a little sand brush bank, the northwest corner of No. 3?

A. Yes, sir.

37 Q. That is there today?

A. Yes, sir; it has always been there, ever since I have any recollection of the island; I think it was a good deal larger years ago than it is now; it might be the timber has been taken away.

38 Q. On the west side of the island?

A. Yes, sir.

39 Q. Now, this Island No. 2, did that channel that you have described, the north line of the channel, and extending north—how far did that island extend north in 1832, with reference to the present line of Fulton street?

A. It extended beyond Fulton, what now is Fulton street.

40 Q. Further north?

A. Yes, sir; there was no Fulton street in the early days, you know.

41 Q. No, I mean what is now the line of Fulton street.

A. North of it.

42 Q. How far north of the present line of Fulton street did that Island No. 2 extend?

A. Well, to my mind, about 175 feet.

43 Q. What was there in 1832 on this island, growing on it, in the shape of trees and vegetation of any kind?

A. Well, there was different classes of tree timber There
315 was these three trees we see now so prominent there, and there was several smaller that I presume has been either wrecked or chopped away for wood or something.

44 Q. They lay just below the three prominent trees now on the south end of the island?

A. Yes, sir; I have not much recollection of even timber growing until you came up to Fulton street; there was several soft maples from eight to twelve inches through. At the end of the island there had been previously, before I commenced ferrying there, there

had been a big soft maple tree there. It had been topped over, I believe, by the wind or weather, and had been cut away by the Indians for wood, and the roots had grown up, and there was a dozen trees, soft maple sprouts, all of them from six inches to ten inches through, that stood there for years.

45 Q. You are describing the island as you saw it in 1832?

A. Yes, sir.

46 Q. Do you know where Mr. Butler's premises are on Waterloo street, south of Fulton?

A. I know by testimony that I heard the other day, from what the gentleman showed me on this matter. He said it was a red building; that is my knowledg of it; this land I know nothing about.

47 Q. Now, taking that location, state what there was west of it, west of Waterloo street, at that point in 1832; going west from the line of what was Waterloo street, what would you strike, going out into the river?

A. On the east bank, from the east bank?

48 Q. From the west of Waterloo street, going westward?

A. Well, I looked at it—now, I would say, that from a line on Waterloo street, the west line of Waterloo street, that would be all the way from 150 to 75 feet to the western edge of the east channel, of the east side of the east channel. You understand me?

49 Q. Yes, sir.

A. Then there is a channel that ran parallel with the banks there, with little variation in outs and ins, I should say, 125 feet
316 space—width; it may have been some places a little more, and some places a little less. Further along I will explain how that is. Then we come to the bank proper. The bank proper on the east side of the island was higher than the bank proper on the west side of the island.

50 Q. The bank of the island, you mean?

A. Yes, sir; because we always ran with the steamers close to the bank, because the deep current was there, and it is made so there by the crookedness of the river on the east side as you come down; the east current always ran right along so the brush would touch us. Now, south of the bridge you speak of, is a sort of a willow that grows in, more particularly in low places, where it has been formerly filled with material from roils and such like. There was willows on an average from twelve to eighteen feet high, and from two inches up to six inches through at the butt, so it makes quite nice, respectable trees. That was all the class of timber that was between this point you speak of. Heavier timber lay below, and a few of the others above.

51 Q. How wide was the island at that point? You have described it up at the east bank of the island, where you saw the willows. How far was it across the bank to the west bank of the island?

A. As I made my calculation last night—I paced it across, and it made 31 paces; that is where I placed the edge of the river.

51½ Q. As it then stood, in 1832?

A. Yes, sir.

52 Q. How many feet south?

A. It must be ninety feet.

53 Q. Describe how the island ran above and below this point.

A. Above this point it ran up and kept growing more to a point I should say, to the head of the island, as near as I can remember now. You might strike water there in a half circle, and it would make the island on the end twenty-five feet back from the
317 point fifty feet wide; it might go a little more or less, as the water would naturally wear it by running.

54 Q. Take from the channel, the channel of Holmes island to the head of the island as you have described it, located it, what was the condition of the surface? Strike a general level there; state whether or not it was a continuous strip.

A. I went down to Oakes street and looked the matter all over, and struck a line about thirty feet above the north line of Oakes street and went and placed myself parallel in a position with the continuous west line of the east branch. I sighted through and then paced from that to the river, maybe twelve rods wide to that bank, leaving about from ten to twelve feet of the bank that slid off like this, as it has been wore out by the water from the west side of the main channel. I found it there, as I looked at it, I found it there about twenty feet from the bank of the west side of the channel, raised at the present time, I estimated three feet high; that is, the island proper. Then I came up on the west bank of the island up——

Mr. BUTTERFIELD: We object to all this talk as not responsive to any question and as incompetent.

The WITNESS: I came up as near as I could judge twenty rods; there seems to be a piece of land that has not been filled out, a very little piece across the channel, and on the mainland you don't see but very little filling on the west side of it; there may be a mere trifle put in, but the west side has never, in my opinion—there never has been any filled in.

55 Q. Where is that with reference to Fulton street?

A. That is about, as near as I would say now, half way from the south end of the island and Fulton street; or there may be another estimate paced across, and struck my line parallel with the east branch. I made it there twelve rods across there. This I made with the same estimate that I made the other. Then I came up into
318 this little ground here on the west side of this general filling, as I took it by the testimony here, and coming up within thirty feet or such a matter of Fulton-street bridge, and paced from there, and I found it ninety feet, and I looked there on the filling there and my impression is that it is the bed where they filled onto; it is the bed of the old original island. I don't think there has been any filling there.

56 Q. Now, in 1832, about what was the surface of this island from the channel between it and Island No. 3 on up to the north point? Take the island that you have described and called No. 2

from the channel between it and Holmes island, or north to the north point.

A. North beyond Fulton street?

57 Q. Clear up to the north point as it was then. About what was the character of the surface of the island at that time?

A. Well, it was rising gradually. The upper end of the island was the highest. The upper end of the island, I should say, was between four and five feet high; it was gradual to the south from the upper point of the island, gradual to the south down to the three-foot shore as I have struck it now. With the water standing at this stage he has got to go down a half a foot to get to what we call the low-water stage.

58 Q. The south side of the island?

A. Yes, sir; the other side I could not get at.

59 Q. Now, state when you saw it in 1832, what portion, if any, of the surface of this island was out of water, what you call dry land.

A. The island is always, in ordinary stages of water, the island is always out of water.

60 Q. You mean from the Holmes point up to the north?

Objected to as leading.

A. It never was under in any stage of water.

61 Q. You mean the entire land clear up to the north point of Fulton street?

A. Yes, sir.

319 Objected to as leading.

62 Q. You have observed the land in later years, have you?

A. Yes, sir.

63 Q. You can't tell when the channels were filled up?

A. I don't think I can tell the date; I knew at the time they were doing it, and I know that, as our country began to settle up here, it drew a certain amount of water off early in the spring, instead of in the summer; consequently, dry summers would affect it, and it would be very low, thus shutting off all this water when it comes in between the upper point—from the point of the island to where the water used to issue, and go in there, showing clearly that there was no water went through there, except what came through the gates of Butterworth & Lowe's factory, which was on that canal that continues there today; of course, that dropped the water so that the steamboat could not get in, except when the water was high, so it came from below and came across the sand bar between the point of these two islands that I speak of, the one the railroad runs on now, No. 1 and 2; when it got high enough it came in there, and, of course, came back on the inside of this channel into the main channel. As soon as the water got down, of course, there was none running there only what would issue through this channel from the canal which was there, and went down in that way.

64 Q. Did you have anything to do at any time with the operation of the old ferry there at an early date?

A. Yes, sir: in my boyhood days I ran it over three years.

65 Q. Ran the ferry?

A. Yes, sir.

66 Q. In what years?

A. Well, I would have to go back and count up; I can make it; I was between 14 and 15 years old; I remember I went to work for a man by the name of Reeves; he is dead now, but his son resides here; my father told him in my presence, "I don't think this current is heavy enough to run them scows."

320 Objected to as not responsive to any question.

Mr. BUTTERFIELD: We ask further that the witness be confined to this suit and not to anything else.

The WITNESS: He says, "You may go and try it." Now, I was between 14 and 15 years old; now, I remember that I was 7 years old when I came here in 1832, August 10th. Well, that would make it about 1841, would it not, the year 1841?

COUNSEL: 1839 or 1840. Well you were about 14 or 15 years old, then.

A. Yes, sir.

67 Q. How long were you engaged, then, in running the ferry?

A. I think I ran it the spring and fall and summers of three years; then I retired, and I think Mr. Stocking took my place.

68 Q. Now, where did that ferry start from on the east bank of the river; where the present line of Fulton street is?

A. As near as I can judge, I would say 175 feet from the north line of Fulton street was the south line of the wharf of the Richard Godfroy warehouse; we used to go right in behind the wharf to get to the landing, and went right out north of the Barnard house; it was not there, but in after years it was put there, before these other storehouses were built there.

69 Q. That is what is now known as the Barnard house?

A. Yes, sir.

70 Q. Now, let us locate that; state where that stands.

A. Well, sir, that stands—the upper end of that house stands——

71 Q. Well, with reference to the line of Waterloo and Fulton streets at present?

A. Fulton street is—there must be a lot in there, for the barn sits back, I should say over fifty feet, a space in there in front of the warehouse from Fulton street—the north line of Fulton street, coming north; then the house goes in and runs—I never measured it—perhaps seventy-five feet or further.

321 72 Q. Seventy-five feet north of Fulton street about?

A. Yes, sir; I should judge so.

73 Q. On which side of Fulton street?

A. Now, hold a moment; I don't want it to go that way. Now, hear me. As near as I can say, fifty feet from Fulton street to the Barnard house, south end of his house, that is, his hotel there. I think perhaps it will set seventy-five feet from that point, making 125 feet to the corner of it.

74 Q. Yes, then I understand you.

The WITNESS: Now, I used to go from the ferry right up to this and just pass a few feet beyond that and go into Waterloo street; that was our exit into Waterloo street; of course that is built up now; we went wherever anybody saw fit; now they have built a block in there, Mr. Avery has, on the grounds of this Richard Godfroy storehouse, on this ground; well, the block is made to face Waterloo street, and Waterloo street runs square south.

Mr. BUTTERFIELD: Now, we ask to have this dissertation and description on the part of the witness stricken out as irrelevant and incompetent.

The WITNESS: Waterloo street does not run square south; it bears to the south; and of course it throws the west end of this place higher up than the east end, but the west corner—the southwest corner of the block stands within five feet, as near as I could see, of where the Richard Godfroy warehouse met the corner of the wharf where we passed through.

75 Q. This lower block, you mean?

A. Yes, sir.

76 Q. And that is how far north of Fulton street?

A. That is—oh, it must be, the back end of it must be 175 feet, the rear; front end of it perhaps 125 or 130 feet.

77 Q. Now, after leaving that point what course did you follow to the west side of the river?

A. We used to run right out, threw the scow out into the river and let it wear across the current, hold it across the current
322 and let it wear; pointed the scow to the northwest and it would wear right across, just to go around the point of the island.

78 Q. Which island?

A. No. 2; then, as we got around No. 2, we pushed into the river, and when the water was high, we used to land at a landing, about as near as I can get it, 100 feet below where the G. R. & I. now crosses the channel, which was filled up; when the water backed, of course, it ran east across there. We used to wear down to where now Fulton-street bridge covers the very ground. There is where we used to go up from our scow, up to the surface.

79 Q. On the east bank?

A. Yes, sir.

80 Q. How many trips did you make in the scows during these two years?

A. Oh, that would be impossible to tell.

81 Q. State whether or not there was daily trips made by the boat.

A. There was no boats in high water, my friend; some days we would make it ten, twelve or fifteen, and some days not so many, some days more.

82 Q. You were continually passing and repassing?

A. With passengers, yes; and, suppose a man would be going across and blow the horn, and we would go and get him, I had to

go. We had to ferry until 9 o'clock in the evening from 6 o'clock in the morning.

83 Q. Did you observe this Island No. 2 on your trips across the ferry?

A. I think so; I crossed the point of it.

84 Q. State how it compared in its condition there when you first saw it.

A. In 1832; I don't hardly understand.

85 Q. State whether or not there has been any change in the island.

A. In No. 2, up to the time that we were running on the ferry?

86 Q. Yes, sir.

A. I saw no change.

323 87 Q. Did you ever have anything to do with the steamboats, or did you ever run any of them?

A. I used to run as second mate on the old Michigan.

88 Q. In what year?

A. In 1853, somewhere.

89 Q. Where did that go from? What was the line that it run on?

A. From the lower docks down here to Grand Haven.

90 Q. Do you remember when the first steamer was first put on the Grand river?

A. Yes, sir.

91 Q. The Mason?

A. Yes, sir.

92 Q. In what year was she put on?

A. In 1836 or 1835, along there.

93 Q. You have described the two islands, the Holmes island and No. 2. State whether, in 1832, there was any channel between those islands and the east bank of the river.

A. I never shall forget it.

94 Q. About how wide was it—the channel?

A. From the Holmes island to the east shore?

95 Q. No, from No. 2 to the east bank?

A. The channel that ran in east of this island?

96 Q. Yes, sir.

A. I remember I went in there once swimming, and came very near being drowned; I remember that very clearly.

97 Q. About how wide was it?

A. About thirty feet, the top surface, and ran down to the bottom about twenty feet, and there was a heavy current always through there.

The COURT: You mean the channel to the north end of No. 3.

Mr. CAMPBELL: I am talking about the other channel; I am talking about the channel east of the river, the channel we are speaking of now; I want to know about that channel. State whether or not there was a channel east of No. 2 and the Holmes island, and between this island and the east bank of the river.

A. Certainly, there was a channel there.

98 Q. How wide was it in 1832?

A. About the same width, sir; one hundred or one hundred and twenty-five feet.

99 Q. How long did it remain there?

A. It remained there until they dug it out; it is there now; it was excavated; it was in there up to this Oakes street there before my time.

100 Q. How long was there a channel there so that water ran through?

A. I don't know as I could tell; I remember of going across the island to the point of the island close to where there was a little bar there, and I pulled off my shoes that I had on—that is, the Holmes island—and I walked across, and there was but very little water running through.

101 Q. I mean now about the natural condition before any filling up, as it existed early in the 30's?

A. Well, only in the spring of the year, I don't think that ran up to where they run the boats now much after 1853. Then we would have to keep filling back as the water grew lower; they had a storehouse that was built down there.

102 Q. Now, you went over on what you understand to be the north line of the old Island 2?

A. Yes, sir.

103 Q. Will you describe what you understand the surface to be, as you understand it?

Objected to as incompetent.

104 Q. What is the surface there?

A. I gave it to you as I understood it before.

105 Q. I call your attention to any artificial filling.

A. I found no artificial filling, except what these gentlemen have been putting in on the east side of the island, I don't think there is any place that it extends clear across to the west side of the island. There is some places it goes over this round point.

106 Q. I will call your attention to the very high bank, being about fifty feet wide, running down from Waterloo street. Did you notice that?

A. A high bank from Waterloo street?

107 Q. Well, go on in your own way and state about that.

A. The highest bank I discovered was between Louis and Oakes street-; then the next bank that came up prominent was, as I understood this gentleman, it is in the rear of his place.

108 Q. Any filling in the rear of his place?

A. No, no; a long bank I say is between and below and this space in there; there has been some put in, ground put in, I think in the channel proper, the east channel proper, that has been filled up; I don't think there has been any more ground on the island.

109 Q. Where is that with reference to Mr. Butler's premises, as you understand where they are?

A. I should say about twenty rods south of Mr. Butler's place.

110 Q. Let me understand one thing. Mr. Butler's place, as you

have it, is where that filling comes out. Right west of the filling there is a green grass lot next in there?

A. Yes, sir, now; south of that; I should judge it is twenty rods.

111 Q. That is this long bank?

A. Yes, sir.

112 Q. Is it very high?

A. I should judge about eight or ten feet.

113 Q. You think that goes onto the island?

A. Yes, sir.

114 Q. Is there anything else on the surface of the land in the way of artificial filling except a bank?

A. Well, on the east part of the bank.

115 Q. How much?

A. Some places two feet and some places three.

116 Q. Now, north of this long bank is there any filling; artificial filling anywhere on the island?

A. There is on what Mr. Butler's property looks like there, the lower part of his property, I judge about four feet high; I
326 have not measured it, the upper part; only stood and looked right at it; it may be six feet, it may be six and a half, it may be five feet; it is between those; I should say six feet high.

117 Q. Does that filling go back of Butler's premises onto the island at all?

A. Yes; I should say 50 feet, that high back of his house, and I should say in a line north and south it came to the bank proper 50 feet.

118 Q. Across the old channel?

A. Yes, sir.

119 Q. Except these two fillings, is there any filling on the island except that little that you have described?

A. Except these two at the north?

120 Q. These two fillings back of Mr. Butler's place, are they plainly marked?

A. Yes, sir.

121 Q. The Butler lands were filled to what depth?

A. I should judge, from the position of this green lawn, the lower southwest corner of the lot where I took my view, I should say, four feet, about; the northwest corner, I should say, that is, maybe a little more or less.

122 Q. This bank lying south of this high bank, about how wide is that north and south?

A. I took it to be 50 feet or 60 feet.

123 Q. How high is that bank, with reference to the surface of the Butler filling?

A. Well, now, what would be natural to take right off to fill the old east channel.

124 Q. Estimate it from the surface of the island?

A. Well, I am taking it right straight through; I would say it was five feet above the surface of the ground; it was higher than Butler's is.

125 Q. Is it plainly marked?

A. Oh, yes; you can see that plainly. We were looking down from Pearl-street bridge; it looks three feet high, and when you got on the level it is about two feet high.

126 Q. State what the level generally of the surface—present surface—of the little island is, north of the Holmes-island
327 channel?

A. Well, it starts from about three feet and runs to a point about four feet and a half or about five feet.

127 Q. I mean the general surface between Fulton street and the old Holmes channel?

A. I have estimated that is is on an average of three feet from the lower point of No. 2, where I took my first estimate, and ran it up to Fulton street today, and from Fulton-street bridge up it was a continuous rise, say at Fulton-street bridge, and continuing a point south to the lower end of the island. It was an average of four feet, take it right through; but the lower end, you see, it three feet up to about half way—is three feet; then it continues to rise to five feet at the upper point.

128 Q. The rise, then, is to the north?

A. Yes, sir.

129 Q. What is there growing on the surface, if anything?

A. Oh, very ordinary classes of vegetation grows all along on that side, but on the west bank there is some tag alders and the remains of some old tag alders—roots—remain there, broke off by the ice.

130 Q. State whether or not the surface, except these two large fillings, is generally covered with grass?

A. Yes, sir.

131 Q. And sod?

A. Yes, sir; there is one large piece, I think they have been planting corn on last summer.

132 Q. Where is that?

A. Now, that is about the centre from Fulton-street bridge, as near as I would judge, backwards and north of the point south.

133 Q. North or south of the filling?

A. North, I think.

134 Q. That is the statement you make of that?

A. No, sir; I take that back; that is south, south of it.

135 Q. Which way is the long filling with reference to the Butler premises, north or south?

A. It is south.

328 136 Q. Do you know when that filling was done, or anything about it?

A. No, sir.

137 Q. Do you know it has been put in in the last twenty years?

A. I could not tell the dates now; it has been filling up for the last fifteen or twenty years.

138 Q. Do you know what the condition of this island was and the surroundings of this channel there was in 1870 and 1871? Did you have any occasion to observe it then?

A. I used to go down the river visiting my brother-in-law; we went down the river about forty miles; we went on this side and took a boat there; I could not tell; it was in 1870 or 1871, I believe this excavation was made in; since this excavation was made we used to go up and down there.

139 Q. That is not the steamboat landing at Oakes street now?

A. Yes, sir.

140 Q. In that slip?

A. Yes, sir. And the filling was not put in to amount to anything until after this excavation was made; after this excavation and the north end of the excavation was thrown right square up there and made a dam.

141 Q. What is the condition of this filling, whether it is broken, or anything of that kind?

A. Well, as far as that is, there is no breaks in the filling, except near the river bed. They sowed some grass there and some things.

142 Q. Where is that?

A. Up along by Butler's.

143 Q. Which side of the old channel; the east channel?

A. Well, it would be the whole of his filling; I see there is more or less grass on it; it would make a little onto the island; his filling, that is.

144 Q. I want to know about this Rathbun house that has been spoken of as the residence of Campau. Whom was that built by?

A. Built by my father.

145 Q. In what year?

A. I think it was built in the same year that we built the Godfroy storehouse.

146 Q. And what year was that?

329 A. That was in 1835, the summer of '35 and in the winter of '35 and '36 we finished it; Mr. Louis Campau lived in it.

147 Q. Is there anything at present on the islands that you recognize this Island 2 as having been there in 1832?

A. Oh, yes; there is the big trees.

148 Q. How many?

A. Three of them.

149 Q. Those are there yet, are they?

A. Yes, sir.

Cross-examination by Mr. BUTTERFIELD:

150 Q. How old were you in 1832?

A. I said from the 28th of May up to the 8th of August.

151 Q. Well, you were 7 years old?

A. Well, you can take it as you please, sir.

152 Q. Who employed you to make these examinations and estimates that you have testified to?

A. Why, Mr. Heath here came to my house and wanted to know if I could locate a certain point on that bank.

153 Q. What was the point?

A. The corner of Richard Godfroy's storehouse, back—the southwest corner.

154 Q. You put in these observations which you have made to make that point?

A. I have, sir.

155 Q. How much were you to get for making that point?

A. I cannot tell you, sir; I got 10 shillings to come here the first day; I have not got anything since.

156 Q. That part of the trade is not fixed yet?

Objected to.

A. I care very little for Butler's interest, and care nothing about the railroad's interest.

157 Q. Do you mean to say you would have taken all these pains and made these examinations and estimates without any anticipation of getting any pay for it, and without any interest in this suit?

A. Well, sir, now, if you will allow me to explain——

COUNSEL: I insist on an answer, yes or no.

The COURT: The counsel is entitled to an answer.

A. Why, I expect my fees, my dear sir, when it comes;
330 I don't expect anything more. If they don't give me my fees they will find it hot for them.

157½ Q. Do you mean to swear that you have spent the time which you have up here and in an examination of these premises and making estimates and surveys and testifying here without an anticipation of any other compensation than your witness fees; do you mean to say that?

A. Well, I have been here for the last 65 years.

158 Q. Yes or no?

A. I have told you I didn't expect anything but my witness fees.

158½ Q. You swear you have done all this expecting no fees, but witness fees; is that so?

A. I went last night——

159 Q. Answer the question.

A. That is so; yes, sir.

160 Q. What interest have you in this suit?

A. What interest?

161 Q. Yes, sir.

A. Well, sir, if you will——

162 Q. Just answer the question?

A. I have no interest only as a man that is brought up as a witness to tell the truth as near as I can say it: I was summoned here to tell the truth; when I heard the testimony that was put in here yesterday by some of the witnesses, and to satisfy myself in regard to it, and to prepare myself to answer your questions, I went there last evening after the court adjourned, and, after looking these matters over very particularly, I tell you my answer.

163 Q. How much time did you spend looking it up for cross-examination?

A. Looking it up?

164 Q. Yes, what do you estimate that at?

The COURT: I don't think you ought to ask such questions.

165 Q. How much time did you spend on this for cross-examination?

A. I went last evening after 6 o'clock; perhaps it was a half an hour I spent, perhaps twenty minutes, down there, and then I came home.

166 Q. All this information as to the lay of the ground
331 you picked up in that twenty minutes?

A. No, sir; before that he asked me to go there.

167 Q. You came over here for the purpose of fixing the point—was near the old Godfroy warehouse—didn't you?

A. You were telling me that.

168 Q. Didn't you?

A. Well, I was telling you that I was invited to go there, and I did do that; he came to me and asked me if I could make a certain point; I said I thought I could; Mr. Heath came to me there; I walked right down here; we went to Pearl street——

Objected to as not responsive to the question.

169 Q. You say you fixed the point, I understand you to swear, that that warehouse—it was on the same line as the wharf, wasn't it?

A. Yes, sir.

170 Q. Was it situated where the Avery building was?

A. Where a portion of it is.

171 Q. What portion?

A. The southwest corner and a portion of the north end of it.

172 Q. Don't you know that the Godfroy building was never on the lot at all according to the record of this county?

A. I don't care anything about the records of this county; I know when I am taking my course, and you nor no other lawyer can browbeat me down. Now, hear that, sir; you recollect that, sir!

The COURT (to the witness:) If there is any question being asked, wait until the question is finished and then answer it as directly as you can and avoid this talk.

The WITNESS: Well, it is what I wish to get at, is to avoid words, but I cannot get at it. There is sometimes I have to make an explanation, and I ask that your honor when I am going too far will halt me, and that will stop all this altercation; but he puts his words, your honor, in such a way to me, as if I was a mere thing. My age certainly should ask a little of his courtesy towards me.

Mr. BUTTERFIELD: I insist that this witness is an intelli-
332 gent witness and we are entitled to answers to our questions.

Mr. CAMPBELL: I object to this manner of cross-examination;

both the words and the manner of counsel are calculated to imply contradiction of the witness and to excite him.

The COURT: The questions must be respectful from this time on.

Mr. BUTTERFIELD:

173 Q. Have you ever examined the records of this county to see where the lot was on which the Godfroy warehouse stood?

A. No, sir; I have not, sir.

174 Q. Is it not a fact that north of Fulton street and between Fulton street and the railroad crossing of the Grand Rapids & Indiana railway the premises have been entirely filled far out beyond the original bank, so as to obliterate every landmark?

A. Every old landmark now seems to be gone.

175 Q. I ask you if north of Fulton street and south of the Grand Rapids & Indiana railroad it has not been filled into the river for a long distance, so as to entirely change the appearance of the shore of the river?

A. No, sir.

176 Q. What landmark is there now north of Fulton-street bridge which you can identify?

A. Well, sir, I will tell you. One landmark still appears to stay there; two posts stand just above the north side of Fulton street from the rear on a parallel, that were used south of the east channel about 160 or 175 feet, as I saw it south of Godfroy's dock; now, if you will go there you will see they are right there, and that would be right in there by the east channel, because it could not go out into the channel when they built the old bridge there.

177 Q. Did you put those posts there?

A. I saw them put there.

178 Q. How long ago?

333 A. I cannot tell the time; I can say when the men built it; it was the man who built the hotel there; he put it back of his barn.

179 Q. What time was it put there?

A. I cannot tell now.

180 Q. Within ten years?

A. It was before ten years.

181 Q. Before ten years.

A. Certainly.

181½ Q. Within how many years?

A. I could not state exactly.

182 Q. Now, was that there twenty years ago?

A. It was more than twenty years; it must have been somewhere near 1853, 1854 or '55; it may have been less than that, and it may have been more.

183 Q. I understand you to say that, by reason of the red warehouse, the location of the red warehouse, and the present posts of the building on the Avery lot, you are able to identify the old wharf; is that a fact?

A. Not by the red warehouse; although I can identify it by the red warehouse.

184 Q. What warehouse do you identify it by?

A. I identify it by the white warehouse that was on the out end of the wharf.

185 Q. You say the Richard Godfroy warehouse was a white warehouse?

A. Yes, sir.

186 Q. And which was further south?

A. Yes, sir; the furtherest warehouse on the wharf to the south there.

Court adjourned until 2 o'clock.

GRAND RAPIDS, MICH., *May 1st*, 1890—2 p. m.

SELDON TURNER again on the stand.

Cross-examination resumed by Mr. BUTTERFIELD.

187 Q. Mr. Turner, I understood you in your testimony this morning to say you are now able to identify the channel here on the north end of the Island 3, as it was in 1832; is that a fact?

A. Yes, sir.

188 Q. Where was that channel with reference to Oakes street—to the line of Oakes street?

334 A. Well, that channel and Oakes street, if I understand you, it is the east channel, and there is a steamboat channel in the east side.

189 Q. No, I am calling your attention to where you said you could see the old channel of Island 3, in 1832.

The COURT: Where the water used to run there at the north end.

Mr. BUTTERFIELD: What I wanted was the channel from the west channel into the east channel. (To the witness:) Where was that channel, with reference to Oakes street, as you found it this morning?

A. Oakes street, as it strikes onto No. 3, Holmes island, it strikes where that emptied into the main channel after it was dug out; of course, it would have gone a little further down before they excavated; when they did that they excavated up that little, that little point; they excavated upon that island, away back onto the island; consequently, it would fetch the end of that, the exit into the east channel, a little further north than it would in its natural state.

190 Q. How was the west end of that channel, as compared with the north lines of Oakes street?

A. I should judge it would be 75 feet north, north of the present—where it would naturally empty, if the road was not across there.

191 Q. Do I understand you to say that the west end of the old channel, between what you called Island No. 2 this morning and Holmes island was about 75 feet north of the north side of Oakes street, as it would be, produced?

A. As near as I can get at it.

192 Q. And that the east line of that channel is about the center of Oakes street, as it is now; is that your idea?

A. No; I shall have to explain how that is. Oakes street is presumed to run across it; I will explain it.

193 Q. Where, in reference to Oakes street produced, did
335 the old channel that you speak of, between Holmes island and what you call No. 2, empty into the steamboat channel; where, with reference to Oakes street, as it is now?

A. I can hardly answer that question, my friend; I cannot answer it as you ask the question. Now, I will give you my reasons why I cannot. The original island projected further down; I told you they took one end of it and threw it off of it when they excavated; consequently, you move the mouth of the channel further upstream and further to the west.

194 Q. Which was the lower down, the east or the west channel?

A. The east mouth.

195 Q. Was it lower down than the west mouth?

A. Yes sir.

196 Q. By about how much, Mr. Turner?

A. I would say 75 feet.

197 Q. Now, commence; you say that channel was about 20 feet wide?

A. Yes, sir.

198 Q. What was the depth of water in the ordinary stage of water?

A. I have no recollection of any water less than three feet or three and a half. I remember, when I was quite a lad, I went in with my brother and cousin, Joseph B. Turner, and I went off to the sand bar just above this little island, dropped down so deep that the current took me down.

199 Q. Were you drowned in the steamboat channel?

A. No, the one between the two islands.

200 Q. How high was the water?

A. It was always higher on this side.

201 Q. On the west side?

A. Yes, sir; the water is higher on the west side for this reason. There is more water on the west side to run a boat, this Holmes island projecting out pretty well into the current from the west line of No. 2 island, from No. 2 island, and, this little island being right at the head of Holmes island, makes sort of a dam and throws it through there.

336 202 Q. What was the comparative size of Holmes island and island called No. 2?

A. The comparative size?

203 Q. Yes, sir.

A. In acres?

203½ Q. Yes, sir.

A. I could not say. There was Mr. Holmes' island—well, from 15 or 16 acres, maybe; maybe a little more or less; I could not be positive.

204 Q. How much had this island at that time, in 1832; how much had this island, which you call No. 2?

A. It must have been four or five acres; it must be as much as that, I would say.

205 Q. Now, starting north, from the north side of the channel, on the north side of Holmes island, what was the character of the south end of what you call No. 2; what kind of land was it; what was on it?

A. Green land, green sod on top of the land; it was not as high as the Holmes island, not by a good deal; you understand me, because Holmes island, because the extreme upper end up there was the highest island of all of them.

206 Q. How high was it above the ordinary stage of water?

A. Oh, the ordinary stage of water was three feet.

207 Q. How was it as you came further north?

A. Up to the center of it, I should say the center as near as I could get from Fulton bridge, south it appeared to be about three feet above.

208 Q. I am calling for your recollection in 1832; not now.

A. I looked this thing over to see if it was as it was when I first lived here in my boyhood days, and I find it, if my memory don't serve me wrong, I find it about the same yet.

209 Q. You don't think it is any higher above the water than it was then?

A. I think it is about the same. As I say, we have eighteen inches more water in the river than what would be in the
337 lower stage of water, consequently when the high stage runs we are so much higher from the water proper.

210 Q. What was the height*h* of that line, commencing—did it get any lower as you came north?

A. No, sir; it arose all the way.

211 Q. Steadily?

A. Yes, sir.

212 Q. What was the height*h* above the water of the north end? How far was that north end above the Fulton-street bridge?

A. About 175 feet.

213 Q. What was the character of the timber on the north end of the island?

A. There had been a little up there before I came here, because I could see stumps cut down by the Indians, and there was two maples from eight to twelve inches through; just about half way from the point—the extreme north point and Fulton-street bridge.

214 Q. Was it there when you came here?

A. Certainly, and right at the point of the island there had been an old large soft maple; whether the wind blew it down or whether it had been borne there by water or ice I could not say; but when it was cut down out of the roots sprung up seven or eight maples, ranging all the way from four to five inches in thickness; they stood there until we had a great ice shove; I cannot say, but anyway it turned all the water across this upper end of the island and turned it into the west channel for several days.

215 Q. When was that?

A. I cannot say when that was; but that was between 1840 and 1853; it took down a good many small trees.

216 Q. What was the width of the island north of what you call No. 2, what was its width?

A. I looked at it there and pronounced——

217 Q. I mean as you remember it in 1832?

A. I went yesterday to look and see if it was as I remembered when I was a boy, and when I came to look the whole matter
338 over I was satisfied it was just as it is in these days; understand me, the island proper.

218 Q. You don't know of your own knowledge whether that surface has been filled in or not, do you?

A. I would say when I looked the matter over, after hearing the testimony of these gentlemen, that I was a little at fault; I went back and examined it afterwards, and afterwards my examination satisfied me that the gentleman was wrong, or I am wrong, one of the two.

219 Q. I want your knowledge whether that had been filled in or not?

A. I say I have testified so; isn't that my knowledge?

220 Q. Where was the mission-house, with reference to Fulton street?

A. Which mission-house?

221 Q. I mean the one you attended?

A. That was the Baptist.

222 Q. Yes. Well?

A. The mission-house lies north of Fulton street; it lies about 125 feet south and west of Bridge street, on Front street.

223 Q. Where does the other mission-house lie?

A. The other mission-house lies—it did lie at that time—it is destroyed since; about six years ago it lied within about ten rods of Butterworth avenue, south of Butterworth avenue, where this West Michigan railroad passes down there. I have forgotten the name of the street; if you have a map here I would point it out.

224 Q. Was it north or south of Butterworth avenue?

A. The Catholic mission?

225 Q. Yes, sir.

A. North.

226 Q. About how far north of Butterworth avenue was it, as it is at present?

A. Well, I should say it was 30 rods.

227 Q. How far from the river was it?

A. Well, it was 30 or 40 rods of the river west.

339 228 Q. What was your employment; what business had you been engaged in since you resided here?

A. Well, most everything.

229 Q. When did you first go into business?

A. After I grew up to manhood the first thing I sought out after we finished the Bridge-street bridge—that is, I stayed at home, but when father didn't want me for anything I looked for jobs some-

where else; times were hard and wages very low; when I was not out doing work I was working at home.

230 Q. How long did that state of things continue?

A. That state of things kept along up to about 1855; I was married in 1853; after that I guess I can tell you about all the time. The first year I worked at a sawing mill, and the second year and third. I drew some wood some of the second year, and third year flour from Sweet's mill; I worked for Mr. Comstock a while as foreman. I lived up there until the war broke out, and when that closed I engaged, in sawing, the foremanship in a saw-mill and looking up timber; was foreman in Grand Rapids until the war broke out. Then I enlisted in 1862; I think my commission dates from the 30th day of July, 1862. I enlisted really in June, and I was discharged on account of disability in 1863, January 16th; my time was served, and from that time the greater portion of my time was spent for A, B, and C, as what you call lumber foreman. I was with Mr. Wonderly for six years as his head man. That fetches it pretty much up. Well, I was here in the city as special inspector.

231 Q. Now, calling your attention to the two upper islands—there were two islands lying above these, were there not?

A. Well, there was this present island and a little small island that just lapped onto the main island down where the railroad bridge crosses.

232 Q. How large were those islands?

A. This island proper, with the adding of the little small island—it was more of a grass island—as my memory serves me, it
340 could not have been over three rods long and about a rod wide. There was some willows on it, and I think some soft maples growing up; for instance, five, ten or fifteen feet.

233 Q. How large is No. 1, as compared with that?

A. Oh, Island No. 1 is the main island. This has only been one in between and adds to Island No. 1.

The COURT: Where was that small island?

A. The small island I guess you will see on the map there—it comes up to the west side of Island No. 1 and projects by Island No. 1, I should say, well, twenty feet or such a matter. I don't think it was to exceed six rods; it may not have been over five rods long. It seems to me it was about thirty feet wide.

Mr. BUTTERFIELD: Did it run south of Island No. 1?

A. Yes, projected by.

234 Q. Where did the southern point of that island come as compared with the present position of the Grand Rapids & Indiana Railroad bridge?

A. I think the railroad bridge must have run about through the center of the island, so there is a little of it below the bridge; I know it was a little to the south of No. 1 island. It was filled up by rising waters and stumps and such like a foot high or so. It was only a few years before it was all one island.

235 Q. You don't know who put on the filling you have men-

tioned, you have no knowledge yourself of who put on the filling you have mentioned as now being over this island?

A. Over No. 2 island?

236 Q. Yes, sir.

A. I have seen men drawing of my own knowledge; I could not perhaps tell the man's name; I don't know any man of my own knowledge at all.

Mr. CAMPBELL: This big bank south of Mr. Butler's premises is a sort of a dumping ground, isn't it?

Objected to as leading.

237 Q. What is the filling composed of in this long bank south of Mr. Butler's premises?

341 Objected to as irrelevant.

A. What constitutes the high bank?

238 Q. Yes, sir.

A. Well, a little of everything, refuse, the drippings taken from every man's kitchen door and surroundings.

239 Q. Did you notice any tin there, or anything of that kind?

A. Yes, sir; tin and old bottles, and everything that is found near all families' back doors.

240 Q. In 1853 had there been any change there in the natural condition of things of that channel and island, had there been any filling up at that time?

A. No, not of these lower islands, because in 1853, the fore part of the year when the water was up, we used to go to this present storehouse, at the upper end of this No. 2 island, then as the water receded we had to go down to the storehouse.

Mr. BUTTERFIELD: How did you fix No. 1 and No. 2 above what Fulton street now is; how high did you put the south end of Island 1 and 2 above where Fulton street now is, the north line of Fulton street in 1832?

A. About 320 feet from Fulton street. Now, the extent, the north line of Fulton street to the island proper, there is some sand there, but I am speaking of the island proper.

241 Q. Now, when was it you last saw these maple trees standing on the north end of this Island No. 2 as you call it?

A. You mean onto No. 1?

242 Q. No. I am now speaking of what you call, what you call in your testimony, No. 2. The island in question in this suit. How long since you have seen the maple trees standing on that north end of the island?

A. Well, sir, you have got me; I cannot say positively; I made the statement; we had a tremendous rush of ice, the biggest we ever had, and it blocked across Pearl Street island, right across there before the bridge was in, the water went through the low places and came out way below Robarg island. Now that was the time

342 that when the ice started again it took hold of these trees, that is old roots that stood there; took them out in the water beyond the island.

243 Q. For how many years after 1832 did you see those trees standing there?

Mr. BUTTERFIELD: I object, because it does not state correctly the testimony of the witness; I think he testified that they had been cut down before he came down, by the Indians.

The WITNESS: I cannot tell you; I am not sure.

244 Q. When was it, to your best judgment?

A. Well, 1841, '42, or '43; those are the years I think they were there then.

245 Q. 1843?

A. Yes, sir; because that is when I was doing ferrying, and Mr. Stocking came on after me, then I went with my father to help him get out timber in 1844; the timber of 1844 and '45, or 1845, I prepared to build the bridge, and the June freshet came on so we could not put the timbers in, and we had to delay and tear them up that we had partly got in. After that we delayed until 1846, then we commenced the bridge and completed it.

246 Q. That is the first Bridge-street bridge?

A. Yes, sir; the State gave them five thousand acres to build it.

247 Q. For how long after that did these trees stand there?

A. I could not tell; I am not sure; I cannot tell; I have seen them when I have been drawing backwards and forth, hauling wheat to Power & Sweet, and haul goods for A, B, and C of Grand Rapids. I was to haul down to this lower storehouse and back to the——

248 Q. Wasn't it after 1853 that you hauled wheat?

A. Some, yes.

249 Q. Did you see them there after that?

A. I think I saw them after, because 1853 is when I first commenced.

250 Q. So it must have been after 1853 that you say you commenced?

Mr. CAMPBELL: After 1853 that he commenced what?

343 Mr. BUTTERFIELD: Hauling material for Sweet & Ball.

251 Q. Did you hear Mr. Stocking's testimony this morning?

A. Yes, part of it; I heard the greatest part of it.

252 Q. Do you know where the barn is that he referred to?

A. The Barnard barn back there?

253 Q. He was speaking of a barn; is there any south of Fulton street?

A. I heard him speak of a brick barn that had manure outside of it.

254 Q. Where is that?

A. That is the barn that I speak of here.

255 Q. Which way is that from Fulton street?

A. North of Fulton street.

Objected to as irrelevant, immaterial and incompetent.

256 Q. Is there any barn south of Fulton street; any such barn?

A. Oh, there is no brick barn south of Fulton street.

257 Q. Is there any between Fulton street and Oakes?

A. No, sir.

BENJAMIN S. HANCHETT, sworn on the part of the defense.

Examined by Mr. CAMPBELL:

1 Q. What is your full name?

A. Benjamin S. Hanchett.

2 Q. Where do you live?

A. On Henry street.

3 Q. City of Grand Rapids?

A. Yes, sir.

4 Q. How long have you lived in this city?

A. Since 1845; well, I lived in Grandville a few years of that time.

5 Q. During what years?

A. From 1852 up to 1860.

6 Q. You came here in 1845?

A. Yes, sir.

7 Q. What was your occupation the first year that you were here?

A. Mechanic.

8 Q. In what employment?

A. I was a tailor by trade.

9 Q. Have you had anything to do with the boats?

A. Yes, sir.

344 10 Q. During what years?

A. Since 1865 I ran two or three different boats here.

11 Q. Are you acquainted with the locality in this city on the east bank of Grand river, between Oakes and Fulton street, produced?

A. Yes, sir.

12 Q. When did you first notice that locality or visit it after you came here?

A. When the boats ran through this north channel.

13 Q. Up to what point?

A. They ran up and back of Foster's store, and my warehouse was below, and below there——

14. The COURT: This was after 1865, you said?

The WITNESS: Yes; well, the boats didn't run very regularly after 1865, but I have run up there in 1865, up to the bridge, the Sweet house.

15. Mr. CAMPBELL: Where is that, with reference to Fulton-street bridge, north or south?

A. It was north.

16 Q. Now, what islands, if any, were there when you first visited that locality in 1845 to the south of Fulton-street bridge?

Objected to as incompetent, the witness not having testified that he was familiar with that locality at that time.

17 Q. When did you first visit this locality?

A. There was three islands, No. 1, 2 and 3. Holmes island, I believe, as they call it now, and there was a little island this side, north of Holmes island, and No. 1, where the jail is.

18 Q. When did you first visit the locality and notice these islands?

A. I think in 1845.

19 Q. Have you been onto the premises recently?

A. I was on the premises yesterday.

20 Q. Is there anything at present on the land, any mark or trees or line by which you can fix where the head of Island No. 3, or Holmes island, was at that time, in 1845?

A. The head of Island No. 3?

21 Q. The north end of the island.

345 A. There is some trees there, some large trees, three big trees there that stood there then.

22 Q. And you spoke of a little island in north of that, north of the Holmes island?

A. Yes, sir.

23 Q. Is that the one you mean as No. 2?

A. That is No. 2.

24 Q. Was there any channel between these islands at that time?

A. Yes, sir.

25 Q. About how wide?

A. Well, I should say sixty or seventy-five feet; I should judge it was; the boats did not run across there.

26 Q. Where is the head of Island No. 3?

27. Mr. BUTTERFIELD: What channel is that between Holmes island and the one right north of it?

Mr. CAMPBELL: Yes, sir.

The WITNESS: It is sixty feet there, from sixty to seventy-five feet.

28. Mr. CAMPBELL: Where was the head of the island with reference to the line of Oakes street extended out into the river?

A. The north end of Island 3 was above Fulton-street bridge.

29 Q. Above Fulton-street bridge?

A. Yes, sir.

30 Q. Where was Island No. 2?

A. No. 2 I mean. Did you ask me for No. 3?

31 Q. I asked for No. 3. The Holmes island?

A. Oh, that was about where it is now.

32 Q. How was it marked, did you find any trees or any channel?

A. Yes, there was some trees and the channel when I was there.

33 Q. Is that your recollection of it at that time?

A. Yes, sir.

34 Q. How much of an island was there in north of the channel extending from that sixty or seventy-five feet north in 1845?

A. Well, it came up above where Fulton-street bridge is.

346 35 Q. About how wide was the island as you remember it?

A. I should say, from my memory, I should judge about three hundred feet wide.

36 Q. What was the character of the surface of the island; anything growing on it then?

A. Yes; there was several trees on it, some soft maples and willows and turf; I have been over onto the island today.

37 Q. When did you first go onto the island?

A. I think in 1845; I think it was in 1845.

38 Q. Did you notice anything there, that was growing there then, in the shape of trees?

A. Nothing more than the big trees and grass and turf; those extend out to the south part of the island.

39 Q. How far north along the surface of the island did timber and turf and things grow?

A. Well, it was on the east side of the island; there was more willows than there was on the other side, if my memory is good, and the big trees were on the west side.

40 Q. How near to the north point of the island did they grow?

A. I should judge some of them grew there within 100 feet, perhaps.

41 Q. Of the north part of the island?

A. Yes, sir.

42 Q. Did you notice that in after years, say from 1845 until 1865, when you went on the river?

A. Yes, sir.

43 Q. Was there any material change in it that you saw?

A. No material change, only the channel had been filled up and graded; I ran the boat up there in high water; that was all. Our warehouse was way below it.

44 Q. Which channel was first filled up there above the island—the one between No. 3 and east bank, or the one between Island 1, by Pearl street? Do you remember?

A. No; I could not tell you that.

45 Q. Do you remember the old ferry that was there?

A. No, sir.

347 46 Q. Now, you went onto the steamers in 1865?

A. Yes, sir.

47 Q. How long did you run there?

A. I was connected with them about three years.

48 Q. That would be until nearly 1868?

A. Yes, sir.

49 Q. How often did you pass by this island while you were on the steamer?

A. Every day, night and morning.

50 Q. Which side of it, east or west?

A. East.

51 Q. How was the island in 1868 when you left it; had there been any material change in it?

A. No, sir; not as I remember; the channel was more filled up, the east channel; didn't run up there only in very high water.

52 Q. Where have you been since 1868, since you left the boats?

A. I have been here.

53 Q. Had you occasion during the next three or four years to go down there at all?

A. Yes, sir.

54 Q. How often?

A. I frequently went down there.

55 Q. How often?

A. Past the island?

56 Q. Yes, sir.

A. I frequently went down that way.

56½ Q. How was it in 1870 and '71; any material change in the island then?

A. I cannot say as there was. Only it had been filled up in this channel.

57 Q. The channel was filling up?

A. Yes, sir.

58 Q. How does that present surface of the island compare with it, as you knew it in 1845?

A. The west portion of the island appears as it did then; trees on it the same as there was then.

59 Q. That is what part of the island?

A. That is about midway.

60 Q. Did you find any artificial filling on the island put in on the west side?

A. On this side; yes, sir.

61 Q. At what place?

A. Where it has been piled there with brush and rubbish.

348 62 Q. About how high is that?

A. I didn't notice in particular; I should say eight or ten feet.

63 Q. In what direction has that been built?

A. From Waterloo street west.

64 Q. And the filling on it is towards the river?

A. Yes, sir.

65 Q. Any other filling there that you noticed?

A. No; I did not notice any more, only the old channel is filled up.

66 Q. State whether or not in 1870 from Fulton-street bridge, on south to the old channel that you speak of, south of these trees and near the line of Oakes street, there was an island in existence.

Objected to as leading and calculated to mislead the witness, in order to have him testify as to where the channel is.

67 Q. You have spoken of a channel between the islands?

A. Yes, sir.

68 Q. As I understand you, you say you saw some trace of that the other day?

A. I did.

69 Q. What in your own mind you thought was a trace of that channel?

A. Yes, sir; it was right at the head of Holmes island, side of the driveway across.

70 Q. Now, commencing at that point and going up to Fulton street, state whether in 1870 there was an island there.

Objected to as leading.

A. There was an island there of course; I think it was No. 2.

71 Q. Have you ever known that island by any other name?

A. That is the only name I ever knew it by.

72 Q. What was the shape of Island No. 1?

A. It ran up above Pearl street, some distance above Pearl street, and it was lower, the upper end was lower than it was down by Pearl street, and then it went down below the jail there;
349 I think the lower end had been filled in; it strikes me it had.

72½ Q. Was there at any time anything that you ever saw that divided the island into two parts?

A. I have known water to run across.

73 Q. At what part of it?

A. I think it was just this side of the jail; I could not swear positively about it; I know I ran a boat across there, a steamboat.

74 Q. That was very high water?

A. Yes, sir.

Cross-examination by Mr. BUTTERFIELD:

75 Q. What is your age, captain?

A. I am 60 years old.

75½ Q. You came here, as I understand, in 1845?

A. Yes, sir.

76 Q. What business did you engage — then?

A. In the tailoring business.

77 Q. Where was your shop?

A. On Monroe street, right opposite the old Rathbun house.

78 Q. How long did you continue in business as a tailor?

A. I was in business here I guess five years.

79 Q. That would bring it up to 1850?

A. Yes, sir.

80 Q. What business did you engage in?

A. I went into mercantile business at Grandville, up at Grandville.

81 Q. How long did you live there?

A. I was there, I think, until 1860.

82 Q. Then what business did you go into?

A. I left there and came up here; I was here perhaps a year; then I went into the boat business.

83 Q. How long did you continue in that business?

A. About five years.

84 Q. You had run boats between here and Grand Haven.

A. Yes, sir.

85 Q. How frequently did those boats leave?

A. Every other day; went down one day and back the next.

86 Q. How far up was the river navigable in 1865 in
350 ordinary water; how far did you go?

A. She used to go up this side of the Barnard house.

87 Q. In ordinary water?

A. Yes, sir.

88 Q. What was the depth of the channel?

A. On the east side?

89 Q. How wide was that channel?

A. I don't know; I cannot positively say that; but the raft used to lie in at the side, and the boat passed on the outside of the raft.

90 Q. How wide would that be?

A. That would depend somewhat on the size of the raft. It was never less than fourteen or sixteen feet wide; sometimes maybe about twenty.

91 Q. What depth of water did the boat take?

A. About three feet.

92 Q. And width?

A. Twenty-five.

93 Q. What proportion of the year could you come up to the warehouse?

A. Well, they used to run there about all the season.

94 Q. Where was this warehouse?

A. It was the red warehouse just above where the Barnard house now stands.

95 Q. Do you know what they used to call it?

A. No.

96 Q. The Godfroy warehouse?

A. I think it was Godfroy that had a store there, and Campau had a store there.

97 Q. Was Godfroy's store north or south?

A. Godfroy's was on Waterloo street, right across on the east side of Waterloo street, and Campau's was this side, towards the river.

98 Q. When was it you first went onto this Holmes island?

A. It was about the Indian payment time, along in the fall.

99 Q. How long were you there?

A. I just went down to look at the Indians, that is all.

351 100 Q. Did you go over the island at all?

A. Just went onto it.

101 Q. You call it Holmes island?

A. No, that is the lower island; that is what we call this No. 3.

102 Q. Where did you find Indians on this what you call No. 2?

A. Some of them camped there; I went over with my brother and saw them there.

103 Q. How far were they camped below the lower end or above the lower end?

A. About the middle.

104 Q. Of the island?

A. Yes, sir.

105 Q. What was the nature—how high was the land around there?

A. It was not very high land, not as high as the other island; it was high enough to keep them above water.

106 Q. How high above the level of the earth?

A. I should say about three feet.

107 Q. What was the timber on it?

A. Maple, and I think one or two elms and willows.

108 Q. How far was that north of this channel that you speak of?

A. North of it?

109 Q. Yes, sir.

A. The lower channel?

110 Q. Yes, sir.

A. About midway of the island.

111 Q. How far north of the lower end of the channel in feet did that island extend, if you remember?

A. I could not tell you just the number of feet.

112 Q. Your best judgment; how far from the south end of what you call Island No. 2, from the little channel at the head of Holmes island, did this piece of land run; how many feet about?

A. Three or four hundred feet.

113 Q. How wide was it?

A. Well, it was probably 300 or 400 feet, 350 feet, I should judge, between the two channels, east and west channels.

114 Q. And what kind of timber was there on the head of it?

A. I think now that it was soft maple.

115 Q. On the head of it?

A. Yes, sir.

352 116 Q. How many of them?

A. There was several branches brought together at an old stump.

117 Q. How many trees were there besides this?

A. There was three, certainly; I know there was three large trees that were there; whether there was any more I could not say.

118 Q. Has any one called your attention to this matter; have you talked with any one with reference to this island?

A. Yes; my attention was called to it; I went down there yesterday and found Mr. Butler there; Mr. Butler and I went out on the island.

119 Q. Did you talk in any way about these trees?

A. I spoke, I guess, to Mr. Butler about it; I won't be sure.

120 Q. To anybody else besides Butler; was there anybody else there?

A. There was nobody else there.

121 Q. Well, at any time?

A. Oh, before that? Well, Mr. Heath once asked me if I remembered about there being a channel there, and I told him I did. Says he, "Whereabouts was it?" I said, "It was there where the big trees stand."

122 Q. How far north; you know where the big trees stand now?

A. Yes, sir.

123 Q. Now, how far north of Fulton street did that island run at that time, of what is now Fulton street?

A. I cannot tell positively; I should think about 75 feet above Fulton street; 75 or 100.

124 Q. Have you any means of knowing where Fulton street crossed the river, then; it was not laid out, was it?

A. No, sir.

125 Q. You cannot tell anything about it, can you?

A. Well, I know where the Barnard house stands; I know that channel was just above that, the upper channel.

126 Q. Was the head of this island above or below that?

A. Above the Barnard house.

127 —. How far above the Barnard house?

353 A. Not much, very little; it is a good while since I had my attention called to it.

128 Q. When you were on the island after this time you went to see the Indian payment in 1845; how long did you stay there?

A. Probably not over half an hour.

129 Q. When were you next on the island?

A. I could not say; I have been over sometimes when we went after fishes.

130 Q. Can you fix any time?

A. I went there in a canoe once; I cannot say when it was; what year.

131 Q. Can you tell any other time but that once when you went there with a canoe?

A. No; besides the payment; I went to see the Indians.

132 Q. When was that; how long afterwards?

A. I think it was the next year; I ain't certain.

133 Q. How long did you stay?

A. Only a few minutes.

134 Q. Where did you land?

A. Went across this Avery channel that runs east and west.

135 Q. That is, over the upper end of this little island that is claimed?

A. Yes, sir.

136 Q. Did you go on the island at the head or below?

A. On the head of it.

137 Q. How far did you go into the island?

A. About half way.

138 Q. How long were you there then?

A. About a half an hour; not over that I guess.

139 Q. When did you next go onto the island?

A. I don't know as I was ever on it before yesterday.

Mr. CAMPBELL: How wide was the channel between this Island No. 2 and the east bank, the one you say the steamer used to go on?

A. I should judge from the rafts and skiffs that used to run by, there was room enough for a boat and a raft too.

354 140 Q. Along by this island?

A. Yes; say about thirty-five feet.

141 Q. Which of the Godfroys was it that kept this store that you have spoken of?

A. William Godfroy.

142 Q. Do you know how many feet it is from Oakes street to Fulton street?

A. No, sir; I do not.

143 Q. Have you any idea?

A. No; sir; I have not; I ain't been there very often; very seldom go around there.

144 Q. Did you ever make any measurements of this island?

A. No, sir; it is just my idea of it, from what I saw; that is all.

Mr. BUTTERFIELD: I want to ask you how many times you have run a boat by the west side?

A. I don't know; a good many times I ran by the west side.

145 Q. What proportion of the time after you commenced steamboating did you run by the west side?

A. The biggest portion of the time I landed on the east side of the river.

146 Q. But most of the steamboating after the year 1865 was up the west side?

A. Yes, sir; and there was a warehouse built where it now stands, where we used to go frequently; and in very low water we used to land below Island No. 3; when the water would permit of us going up we used to go to the old red warehouse.

147 Q. It required a high stage of water to get up there?

A. Well, not very; we used to hit a rock once in awhile.

148 Q. The regular landing place or wharf of the boat was on the west side of the river?

A. Yes, sir.

Mr. CAMPBELL: Which was the deepest channel of the river?

Objected to as immaterial.

A. When I was running the boat the channel was the deepest on the other side.

355 149 Q. On the west side?

A. Yes, sir; when I first came here the deep channel was on the west side.

Mr. BUTTERFIELD: This channel has since been filled up by deposits, that it has been necessary to dredge it out in order to get the steamer up at all on the east side of Island No. 3?

A. Yes, sir.

PATRICK JENNINGS sworn on behalf of the defense.

Examined by Mr. CAMPBELL:

1 Q. Where do you reside?

A. On Grandville avenue.

2 Q. In the city of Grand Rapids?

A. Yes, sir.

3 Q. How long have you been a resident of this city?

A. Since 1847.

4 Q. You came here first in 1847?
A. Yes, sir.
5 Q. Have you lived here ever since?
A. Most of the time; I have been gone about three years.
6 Q. What has been your occupation here?
A. Steamboating, doing everything, all kinds of work.
7 Q. What three years were you away from Grand Rapids?
A. After 1847 I went off three years; I was working on the Michigan Central railroad.
8 Q. How long did you stay here in 1847?
A. About one year, not quite a year; I went back that same summer to Kalamazoo.
9 Q. And then you came back here in what year?
A. Three years after.
10 Q. You have been here ever since?
A. Most of the time; I have been gone perhaps a year or so.
11 Q. What did you do the first season that you were here in 1847?
A. I steamboated a good deal.
12 Q. On what boat?
A. On the Empire.
13 Q. Where was her landing here, her dock?
A. She had several landings; sometimes she would land here by Sweet's hotel, and sometimes at the red warehouse; sometimes below, in low water.
356 14 Q. Where was the red warehouse, with reference to the present line of Fulton street?
A. South of the Barnard house, sir.
15 Q. That stands on the corner of Waterloo and Fulton, doesn't it?
A. Yes, sir; near Fulton.
16 Q. To get up to the red warehouse or the landing at Sweet's hotel, through what part of the river did you go?
A. On this east channel.
17 Q. The channel east of the island?
A. Yes, sir.
18 Q. How many islands were there in the Grand river there?
A. All I know there is this one the jail is on, and this one, No. 2, this Holmes island and the Robarg island.
19 Q. Can you fix, by any present line, where the north line of Island No. 3, or the Holmes island, was in 1847?
A. The line of it, you mean?
20 Q. Yes; where was the head of the island?
A. I should judge about Fulton street.
21 Q. The Island 3; and then where was No. 2?
A. No. 2 was down—you mean—I call No. 2, this island or the road here.
22 Q. Just tell us where that lay, where this Island No. 2 lay?
A. From Fulton street down to Holmes island.
23 Q. From Fulton street to the Holmes island?
A. Yes, sir.

24 Q. How often did you go by there in that year; how many trips did the boat make?

A. I went up every other day, once a day; that is, when it was high water, in the fall and spring.

25 Q. How much of a channel was there between the Island No. 2 and the east bank, then; about how wide?

A. It would depend on the water.

26 Q. In ordinary stages of water, medium?

A. Sometimes there used to be rafts lying there, and we would go by rafts there, 70 or 80 feet, I should judge.

357 27 Q. Which was the deepest part of the river in 1847, when you were past there?

Objected to as leading.

A. Close to the island, along close to the island.

28 Q. To which island?

A. No 2.

29 Q. On which side of the island?

A. Which side?

30 Q. Yes, sir.

A. On the east side.

31 Q. What channel was there between this Island No. 2 and Holmes island?

A. A little channel there—no, it was quite a channel; quite a little of water used to run there. In low water there was not a good deal of water run there.

32 Q. Was the ferry running when you came here?

A. No, sir; not when I came; there was one running after I came here.

33 Q. Just describe the island as you saw it first in 1847; state whether or not there was anything growing on it in the shape of turf or trees?

A. There was brush and a lot of willows on both sides; a lot of willows along there; sometimes there was Indians camped there.

34 Q. How far north did the island run with reference to the present line of Fulton street?

A. Well, it ran a little beyond Fulton street; I could not exactly say how far.

35 Q. North of Fulton street?

A. Yes, sir.

36 Q. What, if anything, was there growing on the north end of the island in the way of trees or anything?

A. I don't think there was much of anything on the north; there was willows along there that I noticed.

37 Q. In ordinary stages about how high was this island above the level of the river from the water?

A. It was not very high; it was perhaps two or three feet.

38 Q. When have you been on the island?

A. I have not been on it for quite a long while until lately.

39 Q. Did you find anything growing there that you
358 remember having been there in the early years, in 1840?

A. Yes, there is trees there that were there, a lot of those willows that were there in 1840; lots of them had been broken down, and there was logs and things.

40 Q. How recently were you down there?

A. Lately?

41 Q. Yes, sir.

A. I went by there every day almost, back and forth.

42 Q. Have you gone there and made an examination with a view of tracing or finding the old channel between that and Holmes island?

A. I could see where they filled up; my business was up and down there every day.

43 Q. About where is it with reference to the line of Oakes street extended out into the river?

A. I think it would come on the north side of the little channel that is there; I think the north line would come north of the channel.

44 Q. Did you go over the land?

A. I walked over it at that time.

45 Q. How was the surface of the island, compared with it as you remembered it in 1847, from that channel up to Fulton street?

A. I think the surface is just about the same; it looks natural to me, except where some of these fellows raised corn and such stuff; of course I could not say much about the surface of that, as there was some filling along there.

46 Q. What does the filling consist of?

A. Well, almost all stuff, haulings from the rubbish from all over the city.

47 Q. A kind of general dumping ground?

A. Yes, sir; Mr. Butler, I guess, had put in better on his ground.

48 Q. This filling, where does it start from; which way does it work from, east or west, with reference to Waterloo street?

A. It is west.

49 Q. Commencing about Waterloo street and following back to the west?

A. Yes, sir.

359 Cross-examination by Mr. BUTTERFIELD:

50 Q. What is your age, Mr. Jennings?

A. I am 65.

51 Q. You came here in 1847, I understand?

A. 1847, yes; spring of 1847.

52 Q. You worked for the next three years on the steamer?

A. No; I worked on the Michigan Central railroad the next three years.

53 Q. Then when did you go onto the river?

A. I think it is five years afterwards.

54 Q. Five years afterwards?

A. Yes, sir.

55 Q. After 1847?

A. Five years after 1847; yes, sir.
56 Q. That is, went on the river?
A. Yes, sir.
57 Q. Was that the first you had been on the river?
A. Yes, sir; that is the first.
58 Q. What steamer was it you ran?
A. The old Empire; I was on most all of them.
59 Q. You simply stayed on the boat as she went up and down the river?
A. Yes, sir.
60 Q. Were you onto this island that you speak of?
A. I believe I was there once.
61 Q. When was that?
A. Oh, it was maybe five or six years after I went boating.
62 Q. How long did you stay on it?
A. Not very long; just walked it over, I guess.
63 Q. How much of it did you see?
A. I saw most all of it.
64 Q. What was it covered with?
A. Part is grass, and there was some rubbish put in there by the ice and high water, and old logs and a lot of rubbish, trees, and one thing another; some grass.
65 Q. And willows?
A. Willows; yes, sir.
66 Q. How thick were they?
A. Oh, they were pretty thick along the bank of the river.
67 Q. How was it when you got in; were there willows all the way across?
A. No, sir.
360 68 Q. How much was there that there was not willows on?
A. Well, they grew along the edge of the island; they did not grow in the center; they grew along the edge of the river, and the boats landed there.
69 Q. You said you went pretty near over the whole island; how long was that island?
A. I cannot tell you.
70 Q. It went up from the old channel up to the end of it?
A. I would have to guess at it.
71 Q. Give us your best judgment about how large it was?
A. Well, about 300 or 400 feet.
72 Q. It must have been smaller in 1857, wasn't it?
A. Yes, sir.
73 Q. Was that at low water or high water?
A. Well, it was low stage of water.
74 Q. How high was the island above the water?
A. How high?
75 Q. Yes, sir.
A. Not very high; maybe two feet, or a little over.
76 Q. Overflowed in high water, was it?
A. Yes, sir.
77 Q. What portion of the end of it overflowed?

A. In the spring all the end of it, and sometimes in the fall; generally in the spring.

78 Q. The upper end of the island you say had willows on?

A. The upper end?

79 Q. Yes, sir.

A. There was some, but there was more on the lower end.

80 Q. Where was this Godfroy warehouse to which you used to go, the red warehouse?

A. I think it is where the Avery block is now. Ball's livery stable, I think that is where it is.

81 Q. How far is that above where Fulton street now is?

A. Well, I don't understand your question.

82 Q. How far above where Fulton street now is?

A. It was not above.

361 83 Q. Above Fulton street as it now is?

A. Oh, yes, yes; I don't know how far it is.

84 Q. You cannot recollect; you have no recollection of it?

A. Recollection of the distance?

85 Q. Have you any recollection of the distance so you could tell me?

A. I cannot tell you exactly.

86 Q. Where did the ferry start?

A. I don't know anything about the ferry.

87 Q. How far was the head of what you call Island No. 2, which you have described?

A. That is if you mean the first ferry; if you mean the last ferry I can tell you about it.

89 Q. Now, from the head of what you call Island No. 2 to the lower part of what you call Island No. 1, how wide a space was there there?

A. Oh, it was quite a space in high water; we would cross there with the steamboat.

90 Q. How much would you say?

A. That would depend on the height of the water, of course.

91 Q. If it was low water or ordinary stage of water?

A. I could not very well tell you what was the width of it.

92 Q. How high did you find the island above the present stage of the water when you went down there yesterday, how many feet where it has been filled?

A. Some two feet, some three feet and so on.

93 Q. How high is the water that is there now?

A. It is considerably higher now than usual.

94 Q. Two or three feet, isn't it?

A. Well, sometimes it is pretty low, and some years it don't come down so low.

95 Q. How does the quantity of water in the river now compare with what it used to be when you were boating?

A. I don't think it is quite so high in the river in the summer time.

96 Q. How wide was this island at the south end of it?

A. The south end of it?

97 Q. Yes, sir?
A. I would have to guess at that now.
362 98 Q. Well, tell me about how wide it was?
A. About 150 feet, somewhere along in there, in the point next to where the little channel was.
99 Q. How wide was the little channel?
A. The small channel that ran there?
100 Q. Yes, sir.
A. How wide was that?
101 Q. Yes.
A. Sometimes it was pretty wide, and sometimes I could walk over, step over on the stones there.
102 Q. How many trees are there north of the little channel which is in there?
A. North?
103 Q. Yes.
A. I don't remember; I see four there now; three or four, I think.
104 Q. When were you on that island?
A. It is a good many years ago.
105 Q. About how many?
A. That is, lately I have been on there.
106 Q. I know, but before that?
A. Along in 1848.
107 Q. Since have you been on the island at all?
A. No, sir.

Mr. CAMPBELL:

108 Q. Do you know how far it is from Oakes street to Fulton street?
A. You mean along Waterloo street?
109 Q. Say along the line of Waterloo street?
A. In the neighborhood of five hundred feet, between five hundred and six hundred feet.

ROBERT M. BARR, sworn on the part of the defense.

Examined by Mr. CAMPBELL:

1 Q. You reside in the city of Grand Rapids?
A. Well, I do at present.
2 Q. How long have you lived here; when did you first come to Grand Rapids?
A. In 1834.
3 Q. What time of the year?
A. In April.
4 Q. How long did you stay here then?
A. Well, 1834, '35, and '36.
5 Q. You were here then three years?
A. Yes, sir.
363 6 Q. Where did you go then?
A. I went out here about three miles on a farm.
7 Q. How long did you stay there?

A. About five or six years.

8 Q. What did you do then?

A. Came back to the city.

9 Q. How long did you live in the city then?

A. I cannot tell you exactly; let us see; I know I was here in the city and I lived here in 1852 and went north to New Brunswick.

10 Q. What business were you in in 1834, '35, and '36 when you first came here?

A. I was carpentering.

11 Q. What business were you in after you left the farm until you went north?

A. I worked at my trade all the time, and kept a meat market part of the time.

12 Q. Did you know the locality in this city south of Fulton street on the east bank of the river, north of Oakes street?

A. Well, yes.

13 Q. When did you first visit that?

A. In 1834.

14 Q. State whether or not at that time there were any islands in Grand river?

A. There were I believe at that time.

15 Q. Just state what they were.

A. Well, there was in the first place a little island where the Pearl-street bridge goes across, and another one that the jail is on, and another little long island, and then the one that we call now the Holmes island, and the Robarg island further down.

16 Q. Now, can you tell now where the head of the Holmes island was then by any present lines—the north end?

A. It was then where it is now, I suppose.

17 Q. Where is it now with reference to present lines, marks or streets?

A. I don't know anything about the lines.

364 18 Q. Have you been onto the *the* island lately?

A. No, sir; I don't know anything about the lines there.

19 Q. How long since you have been on the premises there?

A. I was along there a few days ago.

20 Q. Now, you have spoken of a little island next north of the Holmes island.

A. Yes, sir.

21 Q. State whether or not there was any channel between that and the Holmes island.

A. Yes, there was.

22 Q. About how wide was it in 1834?

A. Oh, well, it was not very wide; probably in high water it would be, perhaps, twenty feet wide, maybe wider.

23 Q. Take that little island—how far up did it run in the river north of that channel, with respect to the old landing; do you remember that?

A. Well, yes; it ran up almost to where the ferry came across; I remember where there was a ferry there that came across, and it came up most to that; I should judge it must be somewhere near

that, as far as—well, near to where the Barnard house is now; somewheres there.

24 Q. On the north of Fulton street?

A. Yes, sir.

25 Q. What was there on that island in 1834 in the way of trees and turf, or anything of that kind?

A. There was some trees on it, and shrubs and bushes.

26 Q. What kind of trees were there there?

A. There was elms, I think, and there was some soft maple.

27 Q. Where were the soft maples?

A. Near the north end, I think; it seems to me there was a buttonwood tree there when I came here.

28 Q. When did you first go onto the island, if at all?

A. Well, it was along some time in April; I could not state what date.

29 Q. What year?

A. 1834.

30 Q. How much of the island did you go over, then?

A. Well, I don't know whether I traveled all over it or not, but probably I did the bigger part of it.

365 31 Q. Do you remember where you went onto the island; what part of it you went onto first?

A. I know where we went onto it; somewhere, I think, where Fulton-street bridge is, about there; I don't know but it may be a little below; there was a spring creek in there.

32 Q. On the east bank of the river?

A. Yes; I know it was quite muddy getting across there; and from there we went to the island in canoe.

33 Q. You went from the mouth of the creek across onto the island?

A. Yes, sir.

34 Q. Do you remember what you found on the island when you struck it, the condition of the surface?

A. Well, there was two or three wigwams, some Indian boats and some sturgeon.

35 Q. How far down on the island did you go there?

A. Well, I don't know whether I went the whole length of it or not; I guess I did pretty near; we went as far as the wigwams were.

36 Q. How often did you visit the islands there in 1834–'35 and '36?

A. Well, perhaps not very often.

37 Q. How old were you then?

A. I guess I was twenty-two or twenty-three, somewhere around there.

38 Q. What is your age now?

A. Well, sir; I think they call me seventy-seven; I think that is it.

39 Q. How recently have you been down there?

A. Let me see; I was down one day last week, and I was there today as far as the Barnard house.

40 Q. Last week did you go over onto the island?
A. Yes, sir.
41 Q. How much of it did you go over?
A. Not a good deal of it; I went down to this boat landing and went across on that road there and back again.
42 Q. Did you go onto this Island No. 2?
A. I don't know what one you mean.
366 43 Q. The one lying north of Holmes island?
A. Well, that is the one I went on.
44 Q. You went to the boat landing and crossed over and up?
A. Yes, sir.
45 Q. How far up did you go on the island?
A. I came up back and turned around there in the wagon road—I don't know how far it is—and back to Waterloo street again.
46 Q. Did you find any trace of what you took to be the old channel between the islands?
A. Well, yes. Little places that looked like it.
47 Q. How far north of that point did you go?
A. North?
48 Q. Yes; did you go onto the island north of the channel? I am speaking now of the channel between Holmes island and the one north of it; now, were you north of that place the other day?
A. Yes, sir.
49 Q. How far north towards Fulton street?
A. Oh, I came north this way; I don't know, probably fifteen or twenty rods; I guess ten or fifteen rods.
50 Q. Did you find anything growing there now that was there when you first saw the island in 1834?
A. I should judge there were some big trees that were there then.
51 Q. You didn't go over the entire surface of the island then?
A. No, sir; I didn't care to do that; just went on a little ways and then back to the road.
52 Q. From the time you first saw it in 1834, did you notice that island more or less up to 1870?
A. I have seen it very frequently.
53 Q. Did you ever cross over on the ferry, the old ferry?
A. Well, in fact, I crossed—I don't know if they had started the regular ferry, but we used to keep a boat there and a man would ferry himself across.
367 54 Q. Did you ever cross there when Mr. Stocking and Mr Turner were ferrying?
A. No, sir.
55 Q. Or before they were there?
A. When I had to cross I had a boat of my own.
56 Q. When you crossed the river where would you land?
A. Fulton-street bridge and the railroad bridge, I should say now; I ain't sure; there used to be a little bit of a grocery store there, and we landed there; I cannot place it now, where that was.
57 Q. In coming to this point how near would you pass to the north line of this island?

A. This little island, the one we are talking about, the one north of Holmes island?

58 Q. Yes, sir.

A. In getting out into the river and getting into this landing place I would say now it came pretty close to the end of it here; the north end of it.

59 Q. How often would you cross in those years?

A. Oh, well, I didn't cross very often; sometimes I had to go over on Sundays to church.

60 Q. You noticed this island of course, in passing to and fro?

A. Yes, sir.

61 Q. The steamers were not running here when you came, were they, on the river?

A. No, sir; there was not any of them when I came here.

62 Q. Do you remember when the first steamer was put on the river?

A. Well, yes; I guess so.

63 Q. Do you remember where her landing was?

A. The landing was—well, somewheres up near by the Barnard house; I should think a little above; I cannot tell exactly now, but somewheres around there.

64 Q. When she came back to that place what part of the river would she come to in coming to that landing near the Barnard house, through what part of the river would she come?

A. In coming up from Grand Haven she would come right up that channel, through the east channel.

368 65 Q. East of the island?

A. Yes, sir.

66 Q. How wide was that between this little island and the east bank?

A. I cannot say how wide it was; at any rate it was wide enough so we could come in there with the steamer.

67 Q. You never measured it?

A. No, sir.

68 Q. Don't remember the distance?

A. No, sir.

69 Q. Did you ever see the steamer go out between Holmes island and the north of it; was the water ever high enough there?

A. For us to go between them?

70 Q. Yes, sir.

A. I never saw no steamers go over there; I went through with a Mackinaw boat.

71 Q. When?

A. Oh, in 1834.

72 Q. Now, from 1834 up to 1870 say, did you have occasion to notice these islands more or less?

A. Well, once in a while I would be there, yes. From 1837 for some years I was not on there very often.

73 Q. Now, take it up to 1850 or 1855, did you see the islands about those years?

A. In 1850 and around there I seen them then every day or two.

74 Q. State whether or not there was any material change in the island from the time you first saw it in 1834?

A. No, sir; there was not any material change; I think there was some trees missing on them; I am sure there was.

75 Q. Did you have occasion to notice them about 1860?

A. Well, no, not much, because in 1860—well, from 1852 to 1862—I was not here only about once or twice a year, and then maybe only to stay over night and back to the lumber woods again.

76 Q. After 1862 were you here, more or less?

A. Then I was, yes.

77 Q. Did you have occasion to notice the islands then?

A. Well, yes.

369 78 Q. Was there any change in them?

A. Yes, sir; they began to fill them up there.

79 Q. Along where?

A. Why, along Waterloo street there.

80 Q. Was there some between Waterloo street, east of the island, in 1862 and 1863?

A. Well, there was, I should judge.

81 Q. Were you able to trace out the island the other day, the lines of the island, the other day?

A. I didn't pay much attention when I was down there; it is filled up so and looks so different from what it used to that I didn't take much notice of it.

82 Q. Now, take the present east bank of the river south of Fulton street; did you notice that; take the east bank of Grand river, running south along from Fulton street down to the big island, to the Holmes island, did you notice that recently?

A. Yes, sir.

83 Q. How does that compare with what was the old line of the island, as you knew it in 1834 and later years?

A. You mean the west shore?

84 Q. Yes, sir.

A. Well, about the same as usual.

Cross-examination:

85 Q. How many spring creeks were there that emptied into the steamboat channel on the east side of Grand river between the warehouse and the present steamboat landing?

A. Let's see; there was two little creeks, I believe.

86 Q. Now, which creek was it that you crossed?

A. Between that—near—right about where the Barnard house now is, I should judge.

87 Q. How large a creek was that?

A. It was not very large; you could step across it.

88 Q. Are you sure that it was that creek, or the one below, that you crossed?

A. I am sure it was that one; the first one you come to.

370 89 Q. And which way did you come from, the village or below?

A. I guess from the village; there was not but two or three houses here then.

90 Q. Were you alone, or was somebody with you?

A. Yes; somebody was with me.

91 Q. Who was with you?

A. Charley Du Chan.

92 Q. Where did you strike the island; about what point on the island?

A. A little below the upper end up there; a little below Fulton-street bridge.

93 Q. I ask you how far from the upper end of the island, as it was then; about how far from the upper end of the island, as it then was, did you strike it?

A. Well, from the north end of the island down to where we went on, about 150 or 200 feet.

94 Q. How far did you go over the island at that time?

A. I guess we went the length of it.

95 Q. The length of it?

A. I think so. There was some Indian wigwams on the other island, and we crossed the channel and went over there.

96 Q. Did you go any further north from where you went onto it?

A. I don't know that I did just then.

97 Q. What were you going on the island for at that time?

A. To see the sturgeons the Indian boys had been catching; those were the first sturgeon I had ever seen; that is what I went there for, to see the sturgeon.

98 Q. Did you see the sturgeon?

A. I did.

99 Q. When did you next go onto the island?

A. Oh, well, I don't know; probably a week afterwards; maybe a few days; I could not tell exactly.

100 Q. Have you any recollection of any particular time that you went onto the island after that?

A. Oh, we were on there several times during the sturgeon-fishing season.

101 Q. How long did that last?

A. A couple of weeks, I guess.

371 102 Q. A couple of weeks?

A. Yes, sir.

103 Q. How long after the sturgeon-fishing season expired was it before the next time you went on there?

A. Well, I could not tell you exactly about that.

104 Q. What is your best judgment?

A. Oh, we were around there weekly through the summer.

105 Q. What for; what took you there?

A. Mostly for fun; looking around to see what we could see.

106 Q. What was your business at that time?

A. I used to work at carpentering; I liked to fish a good deal; I have been on there fishing about that time.

107 Q. How often were you on the island in the year 1834 that you now remember?

A. Well, sir, I was there in 1834 perhaps a dozen times; maybe twenty.

108 Q. Can you recollect that you were on there twenty times?

A. I don't know as it was that; a dozen times at any rate.

109 Q. How many times in 1835?

A. I went on there once in a while.

110 Q. How many times were you there in 1836?

A. Probably—not a great many times.

111 Q. How many times were — on there in 1836?

A. Well, sir, in 1836 I don't know that I was on the island at all, in 1836.

112 Q. Were you in 1837?

A. No, sir; in 1837 I was on the farm about three miles south of here.

113 Q. When were you next on the island after 1835?

A. Well, I know I was on it; I think about 1837, or '38, or '39; I bought a raft from my brother in Flat river, and I used to run down and tie up in the steamboat channel right by the side of the island.

114 Q. Which island?

A. This island that we are talking about; I was on it then.

115 Q. What portion of it were you over then?

A. Probably over all of it.

372 116 Q. Have you any recollection about what portion you were over at all?

A. Oh, yes; I have been the whole length of it.

117 Q. Now, there seems to be something sort of amusing about this examination. What is it that pleases you?

A. Probably I went to see whether the island was growing, or something of that kind.

118 Q. When were you there after 1837, after this time you tied at the wharf with your raft?

A. After that time I don't know that I have been on that island, or even the lower one, or none of the islands; I don't know that I have until along lately.

119 Q. Since 1837 until lately?

A. It was either 1837 or 1838.

120 Q. Since 1837 or 1838 you have not been on there to your knowledge until within a few days?

A. I think not, on any of the islands except the Holmes island; I was on there two or three times in the last year.

121 Q. Now, you say you went over this island two or three times. Have you been on there lately?

A. I was on there a few days ago.

122 Q. How came you to go there then?

A. Well, sir, I went down to see what it looked like.

123 Q. Did Mr. Heath ask you to go?

A. Yes, sir.

124 Q. He went down with you?

A. We went down there; yes, sir; walked down there.

125 Q. I understand you to say that you saw a channel there that looked like the old channel, to you, at the head of Holmes island?

A. Yes, sir: between them two islands.

126 Q. How far north from the head of Holmes island did this island in question, which you have testified about, extend, about how many feet?

A. From Holmes island north?

127 Q. Yes, sir.

A. I cannot tell how many feet; probably six hundred or
373 seven hundred feet. I cannot tell exactly. From the Holmes island to the north end of Fulton-street bridge.

128 Q. How much north did it extend to Fulton-street bridge?

A. Well, not a great ways; I should think a hundred feet.

129 Q. How do you fix Fulton street; there was none there at all?

A. No, sir; not then.

130 Q. How do you fix the locality which you call Fulton street?

A. Fix it now because the bridge is there?

131 Q. How did you fix it as compared with that time?

A. Well, then I didn't know anything about any Fulton street.

132 Q. Do you where the Godfroy warehouse was?

A. Yes sir; I did know.

133 Q. How far was that above this little creek that you crossed?

A. That was some little ways, probably 150 feet, I guess; I don't know but more.

134 Q. As a matter of fact, wasn't it, this little creek on the north bounded by low lands that rose up gradually, and on the higher part of the same land stood the red warehouse? Wasn't that the fact?

A. Where the red warehouse was there was high land there.

135 Q. How was it just south of there; I say just south of there, somewhere near where Fulton-street bridge is now, just a little below where the little creek is, between the little creek and the red warehouse, what was the character of the land?

A. It was dry land until you come on the north of this little creek.

136 Q. Was it dry land all the way north of the little creek to the warehouse, or was it swampy to the warehouse?

A. If I recollect right it was, somewhere above where the Barnard house now stands; I think it was.

137 Q. Isn't it, as a matter of fact, in the same place where
374 the Barnard house now stands, only down by the river?

A. Well, sir, I don't know. It seems to me it was a little above where the Barnard house now stands.

138 Q. How far above, in your best judgment, do you think it was?

A. Well, not far; I cannot say; it was not very far.

139 Q. What was the character of the timber on the north end of this island in question; how did it look?

A. Well, there was some smallish timber there, if I remember right; there was some several smallish trees, and it seems to me there was one buttonwood and brush and willows.

140 Q. From 1838 up to about a week ago your attention has not been called to this matter at all, has it?

A. No, sir; I have not been on there, down that way.

ABRAM W. PIKE sworn on the part of the defense.

Examined by Mr. CAMPBELL:

1 Q. You reside in the city of Grand Rapids?

A. I do.

2 Q. How long have you lived here?

A. 52 years next August.

3 Q. What year did you come here in?

A. 1838; 3rd day of August, 1838.

4 Q. Have you been here ever since?

A. I have been away two or three years of that time.

5 Q. During what period?

A. I was at Detroit for a year; took a stock of goods there and sold them, and came back again.

6 Q. What year were you in Detroit?

A. 1840.

7 Q. What business were you in after you came here in 1838; during the years 1838 and 1839?

A. In the dry-goods trade.

8 Q. Where was your place of business?

A. First on Bridge street for a year and a half, and then on the Campau place here.

9 Q. And after you came here in the 40's what did you
375 do then?

A. Selling goods almost all the time, sir, up to ten or twelve years ago.

10 Q. Are you familiar with the present line of East Fulton street on the river; know the locality?

A. Oh, yes, certainly.

11 Q. State what, if any, islands there were in the Grand river when you came here in 1838?

A. Well, the same islands that is here now; one or two down here at the end of Pearl-street bridge, and then there came down below about Fulton street—there commenced another island—ran down to where the steamboat landing is. There was a channel running diagonally from the northwest to southeast across above the slip there, the steamboat basin.

12 Q. What was the lower and longer island called; by what name was that known in 1838?

A. No name that I have heard.

13 Q. By what name has it been known since?

A. We used to call it Kingsbury's island.

14 Q. Did you ever hear it called the Holmes island?

A. No, sir.

15 Q. Or Island 3?

A. Never until recently heard it called—I don't know whether it is 3 or 4; we called it the big island.

16 Q. Where was the north line of that island in 1838, with reference to present marks—say Oakes street—present lines?

A. The north end of the big island?

17 Q. Yes, sir.

A. It came up as far as Fulton-street bridge; it would lie a little further north, I guess.

18 Q. About how far north of Fulton?

A. I could not tell you.

19 Q. Do you remember a ferry here that ran across?

A. Yes, sir; I crossed it often.

20 Q. From what point did that leave in the east bank of the river?

A. About above the Barnard house, I should say it was.

376 21 Q. In crossing the river how near would it go to the head of this island?

A. It went south of it, pretty near the head of it. After they got their load in they would go out and drop down to the south a little to go around the bar at Island 2, and drop down to the southwest and go up the river a little and cross there.

22 Q. Around the head of this island. Now, from that point where the ferry crossed how far did that island extend south?

A. How far from the ferry?

23 Q. Yes, sir.

A. Southward?

24 Q. Yes, how far down the river did it extend?

A. You mean to go, including the island, way down to the boat landing?

25 Q. Yes, sir.

A. About half a mile.

26 Q. Was there any channel separating these bodies anywhere south of Fulton street?

A. There was a small channel running through the island.

27 Q. How far south of Fulton street?

A. Fifty, sixty or seventy rods. Perhaps more; I cannot say; I guess not. Starting northwest and running through to the southeast. A narrow channel about a rod wide, I believe.

28 Q. What channel was there east of the islands?

A. It was called the steamboat channel sometimes.

29 Q. Did you ever travel up and down the channel in early years?

A. Often.

30 Q. To what point?

A. Up to the little place off here.

31 Q. The steamboat used to go in the east channel?

A. Yes, sir.

32 Q. Were you on this island in 1838 and 1839?

A. Yes, every few weeks.

33 Q. Take this island lying by Fulton street west and north. North of the channel which was spoken of?

A. I didn't go onto that end of the island. I could see it.

377 34 Q. Did you go on the island at all in 1838 and 1839?

A. Yes, sir.

35 Q. North of the channel?

A. Yes, sir.

36 Q. What was it covered with in 1838 and 1839?

A. Well, small trees and things.

37 Q. Trees and shrubs?

A. Yes, sir; kind of grass plat, not very much timber on it, trees around the river, on the bank of the river and one on the east of the bank.

38 Q. Around the sides of the island?

A. Yes, sir.

39 Q. Then how far did that run towards the north of the island?

A. The timber?

40 Q. Yes, sir.

A. There was willows I think up pretty well towards the north end; they were small.

41 Q. Do you remember any other kind of timber towards the north end or at the north end, soft maples, or anything of that kind?

A. There may have been, I cannot recollect about that.

42 Q. How recently have you been on the premises?

A. I have been there within two or three weeks.

43 Q. Did you go over the island then?

A. I did.

44 Q. From Fulton street south?

A. Yes, sir; down to the railroad bridge.

45 Q. Did you go along the west line of the island?

A. Pretty close to the west side of it.

46 Q. How does it compare now when you saw it two or three weeks ago with the west bank of the island as it existed in 1838 and 1839?

A. Very little change on the west side.

47 Q. What change, that is from Fulton street down?

A. Yes, well, I don't know; to the upper end there is some changes there; it has been filled in; there was no channel when I went there; willows grown up.

48 Q. The east side of the island has been filled up more or less?

378 A. Yes; but the west side of the island is changed very little any time; some drift on the bank of the stream there yet.

49 Q. Do you know in what year the land was filled in, the channel between Island No. 1 and the other?

A. No, sir; I don't remember the fact of its being done; I don't remember when it was done.

50 Q. Can you give about the year?

A. No, sir.

51 Q. You haven't the date in your mind, have you?

A. No, sir.

52 Q. You saw that island in 1838, and you have known it more or less ever since?

A. Yes, sir.

Objected to as leading.

53 Q. State whether or not there was any material change in the island up to, say the year 1870?

A. Very little change, I should think; the slip was built there, and there has been filling in there.

54 Q. That is east of the island?

A. Yes; the eastern channel I am speaking of; the west channel was not changed but very little.

Mr. BUTTERFIELD:

55 Q. I understand, Mr. Pike, that from 1838 up to within the last fifteen years you have been engaged in the dry-goods business?

A. Yes, sir.

56 Q. That has been your occupation?

A. Yes, and grocery, too.

57 Q. You were with Mr. Roberts, were you, in——

A. Thirty years; yes, sir.

58 Q. When do you first recollect of being on the island in question; that is the island which you have described as between Island No. 3, or the Holmes island, and Fulton-street bridge?

A. I was on it in 1838.

59 Q. What time of the year?

A. Along soon after I got here; I went down there to see the Indians.

60 Q. Where did you go onto the island? what part of it?

A. I went just above the steamboat landing.

379 61 Q. What was the character of the island at that place?

A. Pretty high bank; bank on both sides.

62 Q. That is where the large trees now stand, is it not?

A. A little below where they stand.

63 Q. And between that and this channel you have described?

A. That is the ferry channel?

64 Q. Yes, sir.

A. I don't understand your question.

65 Q. Where you went onto the island at that time was north of this little channel which you have described as at the head of Holmes island?

A. Well, I used to go on the island then about where the steamboat landed.

66 Q. How far did you go north at that time on the island?

A. I don't know, sir; you mean the first time?

67 Q. Yes sir.

A. I cannot tell you, sir.

68 Q. Have you any recollection of going over the north part of the island?

A. Yes, sir; often.

69 Q. At that time?

A. In the next few years.

70 Q. What was the character of the land in places?

A. Gradually grew lower towards Fulton street.

71 Q. How low was it as you came towards Fulton street there; how low did it get?

A. It was dry there in summer time; in high water it was covered with water.

72 Q. When the water was low it was not very high above the water, was it?

A. No.

73 Q. It was low, wet land, was it not?

A. It was sandy.

74 Q. Covered with a growth of brushes north of these trees?

A. No brush only in the river.

75 Q. How was it towards the north end; covered with brushes?

A. Not much.

76 Q. What was there then?

A. No trees of any large size.

77 Q. What was the character of the trees?

A. Willows around the edges.

380 78 Q. Was there some rapid-growing water willows?

A. Yes, there may have been some of those too.

79 Q. How far was it from where this little channel was to the end of this island? As you call it, how many feet, how far was it?

A. From Fulton street?

80 Q. No; how long was this little island above this channel, commencing at the channel, how far did you go to go back to the north end of it?

A. I guess about fifty rods, or sixty rods.

81 Q. How do you fix Fulton street by any distance?

A. Right where it is.

82 Q. As it is there now?

A. Yes, sir.

83 Q. That is, you mean as it appears today, there where this little channel was, it is about fifty rods up to Fulton street; is that it?

A. Well, it may be sixty or seventy.

84 Q. What is your judgment?

A. I should judge it would be seventy rods.

85 Q. From where this channel is now up to Fulton street?

A. Yes, sir.

86 Q. How wide was the channel?

A. It was about a rod wide, I should say; sixteen feet or twelve feet; some places it might be wider.

87 Q. How deep was it on the upper end of it?

A. Oh, quite a depth of water in it when the river was up. In low water I don't think any ran through there at all.

88 Q. In low water there would be no water there and it would be one continuous island?

A. No, there would be some standing in the upper part of the channel.

89 Q. And in the balance of it there would be no water?

A. No water in it.

90 Q. And it would be a continuous island from the bottom of No. 3 on to the head of this island that you speak of?

A. That is about it, yes, sir; I don't think in low water
381 there would be any running there; I don't think I ever saw any running there. When the river was high the whole island was over.

91 Q. Now, take medium water, was not a large piece of this island which is in question covered by water?

A. Yes, sir.

92 Q. In medium water?

A. Well, what do you call that?

93 Q. Well, between the highest and lowest.

A. Well, between the part towards Fulton-street bridge would be covered over a little.

94 Q. That is, the lowest part would be?

A. Yes, sir.

95 Q. Now, the parts from the distance between these points, are you able to give me the length of the island, first, how wide it was?

A. The best I can give is—it is wider at the steamboat landing than it is away; I think it is about thirty rods at the steamboat landing.

96 Q. How wide was it at the northern end?

A. It ran down very narrow at that end.

97 Q. How wide was it in the center between the two points?

98 A. I gave you the width at the steamboat landing, not at the lower end.

99 Q. Now, between the lower end and upper end, just at the middle, how wide was it?

A. That is the place I fixed, about thirty-five rods.

100 Q. How many acres are in it?

A. I don't know.

101 Q. You saw it; how many acres are there?

A. I am not much of a surveyor; I cannot guess at it.

102 Q. Well, give me your best judgment?

A. The whole island?

103 Q. No, just above the channel?

A. Two or three acres, I guess; may be less; it may be possibly four acres; I cannot say.

104 Q. How far was it from the north end of this island to the south end of Island No. 1?

382 A. That is between the island; well, it is about five or six rods, perhaps.

105 Q. How long was it after 1838 that you were on the island again?

A. I was on it every year, and sometimes twenty or thirty times a year.

106 Q. Right along from the commencement up to this time?

A. No; I have not been there in late years so much; I used to be in the habit of going down there.

107 Q. When did the habit stop?

A. Well, I sort of grew lazy.

108 Q. How many years have you stopped the habit of going there?

A. I have been there two or three times a year; been there twice this spring.

109 Q. The whole face of things has changed there very much in the last ten years, haven't they?

A. Not the western side.

110 Q. Well, the whole face or general surroundings have changed?

A. Well, there has been filling in.

111 Q. There has been a barrier built at the head of Island 3?

A. What you call a steamboat slip there.

112 Q. And from that barrier on to Fulton street is now dry land?

A. No, sir; I guess it is not all dry land.

113 Q. How much is there that is not dry in ordinary water?

A. Well, there is willows growing down there, that is where the east channel was.

114 Q. What proportion of it is not dry land in ordinary water in the river, ordinary stage?

A. Perhaps a third of it.

115 Q. In low water it is entirely dry, is it not?

A. Yes, sir.

116 Q. How many acres is there between this barrier that is put across there at the head of Island 3 and Fulton street, in your judgment?

A. I just said I thought there was about three or four.

117 Q. I asked you how many there was in the island. That is not all island, is it? Do you think that all the land
383 between this barrier and Fulton street is what constitutes the island?

A. No, but the old east channel; I was not reckoning that in.

118 Q. Isn't that all filled up a greater portion of the way?

A. Yes, with willows.

120 Q. Isn't it filled up for more than half the distance? Isn't it filled up fifteen feet back up on a level with Waterloo street?

A. No; I guess not that much; I don't think so.

Mr. CAMPBELL:

121 Q. You speak of some willows there marking the old line of the channel.

A. Yes, sir; east of the channel; steamboat channel.

122 Q. Where did you find those?

A. Commencing below Fulton-street bridge, along down there, unless somebody has pulled them out and got them out.

Mr. BUTTERFIELD:

123 Q. How far did that run below Fulton-street bridge?

A. Twenty rods.

124 Q. The willows did?

A. Followed down the shore. I think they did, twenty or thirty rods; yes, sir.

BILLIUS STOCKING recalled.

Examined by Mr. CAMPBELL:

250 Q. Mr. Stocking, in your testimony this morning you referred to a barn with some manure back of it; you said you thought it was south of Fulton street.

A. Yes, sir.

251 Q. Have you gone to the premises since you testified this forenoon?

A. Yes, sir,

252 Q. And observed the location of the barn?

A. Yes, sir.

253 Q. Where is it?

A. North of Fulton street.

254 Q. How far north, about?

A. Well, it is five or six rods; maybe more.

Mr. BUTTERFIELD:

255 Q. How far is it filled back of the barn to the river, Mr. Stocking?

A. How far is it filled?

384 256 Q. Yes, sir.

A. Above the Fulton-street bridge you mean?

257 Q. Yes, sir.

A. Well, the channel is pretty much filled up.

258 Q. About how many feet back to the river?

A. To the river?

259 Q. Yes, sir.

A. Well, the channel is filled up—east channel, but on the west side of the island there don't appear to be any filling.

260 Q. Now, calling attention to the place which you now speak of as the barn above Fulton-street bridge, I will ask you how far that is filled back?

A. Back from the main shore?

261 Q. Yes.

A. Well, I cannot say just how far that is not filled across the island.

262 Q. You think the island appears up there?

A. I think it does; yes, sir.

263 Q. Doesn't that continue clear up to the Island No. 1?

A. No, sir.

264 Q. It does not?

A. No, sir.

Whereupon court adjourned until tomorrow morning at 9 o'clock.

GRAND RAPIDS, MICH., *May* 2, 1890—9 o'clock a. m.

Mr. LUCE recalled.

Examined by Mr. CAMPBELL:

177 Q. Mr. Luce, since your examination a day or two ago have you visited the premises in question?

A. Yes, sir.

178 Q. When did you go there?

A. I was there yesterday.

179 Q. State whether or not you are able to find on the ground any marks or lines of the old Island No. 3, showing the location of it.

A. Well——

180 Q. Just state what you did?

A. I think I got the line of the ferry too far down.

385 181 Q. In your statement the other day?

A. Yes, sir.

182 Q. Where would you locate the east landing of the ferry with reference to the present lines of, say Fulton street, or the Barnard house?

A. Well, I should locate it up near the barn.

183 Q. The stone barn?

A. The brick barn.

184 Q. Kept by Ball & Watters?

A. Yes.

185 Q. That is north of the Barnard house, isn't it?

A. Yes.

186 Q. About how far from the present line of Fulton street; did you make any measurements?

A. No, sir, I didn't make any measurements; about 200 feet or more.

187 Q. Did you make any examination from the east lines; did you go onto the island?

A. No, sir, I was not on the bank, but Mr. Butler asked me to go and look it over. When I first spoke to you about it I was in O'Brien's office, and he wanted to know if I was not an old resident here, and I said I was; he wanted me for a witness; I paid no attention to it, and he subpœn-ed me; I didn't know what he wanted; I supposed he wanted me to swear there was an island there. When you came to ask me the minute of the length and breadth and width and everything, it is pretty hard matter for me to remember.

188 Q. You said, I believe, in your testimony, you hadn't made a recent examination of the island?

A. No, sir; I went there yesterday morning, and I guess Mr. Butterfield was there at the same time on the island.

Mr. BUTTERFIELD:

189 Q. Now, you fix that starting of the ferry because you fix the position of the old red warehouse as where the Barnard barn is now?

A. Where the barn is?

190 Q. Yes; don't you fix the position of the old red warehouse as where the barn is now?

A. Well, sir, the white warehouse would be pretty near there.

386 191 Q. Where was that?

A. That was the middle house.

192 Q. And below that was another warehouse?

A. Yes, sir.

193 Q. That was a warehouse?

A. Yes, sir.

194 Q. And the ferry went below the white warehouse?

A. Yes; that is, as I understand it; we used to go around this corner and drive out in that way.

195 Q. In looking yesterday did you find what was the original east bank of the river; the original east meander?

A. I didn't find the original east meander, but I could tell pretty near by the looks of the ground.

196 Q. Now, there is a barn standing right next to Fulton street and right south of the Barnard house; I presume it is the Barnard-barn?

A. Yes, sir.

197 Q. Do you fix the old channel of the stream on the east or west of that barn?

A. I should judge that old barn is pretty near on the channel.

198 Q. Then the east line was this side of the channel?

A. No, I didn't look at it particularly as to that; I believe that line would be pretty near the east line, the front of the barn, if it was a little over this way.

199 Q. Now, you went further west and saw two posts in the house?

A. No, I did not.

200 Q. Some twenty or thirty feet west of that?

A. I didn't notice any.

201 Q. If that was the line of the barn, or was the old east shore, those posts never could have stood there on the east side of the channel, could they?

A. Oh, the posts might have been put in first; put in when it was filled up.

202 Q. In your judgment those posts have been put in since the ground was filled up?

A. I don't know; I didn't notice any posts; there might have been some.

203 Q. This barn is all filled up back of it?

A. Well, it is filled up some ways from the end of the barn.

387 204 Q. Which barn?

A. The Avery barn.

205 Q. Then it is filled up in the rear of that?

A. And right north of the Avery barn is a clearly defined channel.

206 Q. Clearly defined channel?

A. Yes, sir.

207 Q. And quite a stream of water runs between it and the place where the Grand Rapids & Indiana railroad bridge crosses?

A. Yes, sir.

208 Q. Now, what is on the north line on the north side of that stream where it had originally been?

A. I think that is on the corner of the island.

209 Q. No. 2?

A. Yes, sir.

210. Mr. CAMPBELL: That is Island No. 2; you mean one of the upper islands?

A. I mean Island Nos. 1 and 2 together. I never heard of Island Nos. 2 and 3.

211 Q. The brick barn is the Avery barn, isn't it?

A. The brick barn; I was looking at it; it looks like it was half way or two-thirds across the channel.

212 Q. Avery's barn is a brick barn and occupied by Ball and Watters?

A. Yes, sir.

213 Q. Do you know the land the Avery barn is built on?

A. No, sir.

214 Q. Do you know whether it is the lot William P. Innes owned?

A. It strike- me Innes had the one with that old building on.

THOMAS ROBBINS sworn on behalf of the defendant.

Examined by Mr. CAMPBELL:

1 Q. Where do you reside?

A. I live on Second avenue now.

2 Q. City of Grand Rapids?

A. Yes, sir.

3 Q. How long have you been residing in this city?

A. Since 1835.

4 Q. What is your age now?

A. I am going on 59.

5 Q. And you have lived here since 1835?

A. Yes, sir.

388 6 Q. Did you have anything to do with the running of the old ferry that was run across the river from east to west before they put on the steamers?

A. Well, I helped my father, sir.

7 Q. He used to run the boat in those years?

A. Yes, sir.

8 Q. Can you tell now how many years you were on the boat?

A. I was on it twenty-five years.

9 Q. When did you commence?

A. I commenced pretty near—I don't know as I can remember; I was about twelve years old.

10 Q. I am speaking of the ferry-boat.

A. Oh, no; I don't remember about that at all; I thought you meant the steamboat.

11 Q. You say you were on the boats twenty-five years?

A. Yes, on the steamboats; I helped my father with the ferry as long as he kept it.

12 Q. Do you know who succeeded your father; who ran it when your father left it; was it Mr. Turner or Mr. Stocking?

A. Well, sir, I could not tell you.

13 Q. Do you remember what year it was?

A. I do not.

14 Q. Do you remember what year you went onto the steamer?

A. No, sir.

15 Q. What was the first steamer you run on?

A. I run on the Paragon.

16 Q. As I understand, your father ran the ferry awhile before taking the steamers?

A. Well, yes, awhile; I don't know exactly how long it was.

17 Q. What line did the steamers run on that you worked on?

A. From Grand Haven up to here.

18 Q. Where was their landing in Grand Rapids when you first commenced on them?

A. Well, in the spring of the year I usually ran back to Sweet's hotel.

19 Q. Through which channel of the river?

A. On the east side.

389 20 Q. By some islands that were in there?

A. Yes, sir.

21 Q. I will ask you now, when you first knew the river, in the early years, what islands there were in the Grand river, say below the present line of Pearl street?

A. There was an Island No. 1 and 2 and 3 and 4. Robarg island makes No. 4.

22 Q. That is one away down?

A. Yes, sir.

23 Q. This one that you call No. 2, where does that lie?

A. That lies right below Fulton-street bridge.

24 Q. How far did it go down?

A. Goes down to No. 3 island.

25 Q. Which is No. 3; have you known it by the name of Holmes island?

A. Yes, sir.

26 Q. That is the one that is known as Holmes island?

A. Yes.

27 Q. In those early years state what channel there was, if any, between the Holmes island and this one lying north of it?

A. Well, there was a channel so boats could run up there.

28 Q. And in high water?

A. Well, they could run up as far as Holmes island most all the summer.

29 Q. I am speaking of the little channel between the two islands?

A. Yes, I know.

30 Q. You mean the one that ran east and west between Holmes island and the one north of it?

A. No, I mean the one we used to run boats up along through.

31 Q. You are speaking of the east channel?

A. Yes, sir.

32 Q. The channel east of the island?

A. Yes, sir.

33 Q. I am now asking as to the channel between the islands?

A. Oh, oh, between them.

34 Q. Between this island and the one north of it? State whether there was a channel there in the early years?

A. Yes.

390 35 Q. How wide, about?

A. I should judge it was 175 to two hundred feet.

The COURT: Where is that?

Mr. CAMPBELL: Between Holmes island and the one north of it.

36 Q. Which island do you mean now, Mr. Robbins?

A. Between 2 and 3 Island.

37 Q. And from that channel north, how far did Island No. 2 run up?

A. It ran up from where Fulton street-bridge is now; this side of it, north.

38 Q. What were the conditions there when you first knew the river in the 30's?

A. I knew it early in the 40's.

39 Q. Well, how was it then; did you go onto this Island No. 2 when you were there?

A. Yes, sir; very often.

40 Q. Describe the condition of the island as it was when you first knew it?

A. Well, there was two or three trees on it, and lots of willows, willow trees, and probably some of them five or six inches through; little willows all the way; the whole length and width of it, too.

41 Q. State whether or not there was any timber growing at the north end of the island?

Objected to as leading.

A. Well, there was small willow trees, small trees.

42 Q. Did you have anything to do with these trees in the management of your boat?

A. Yes sir.

43 Q. At the head of the island?

A. Yes, sir.

44 Q. What was it?

A. When we got aground there we used to run lines to the bank and heave her off.

45 Q. Which end of the island?

A. The upper end.

46 Q. The north end?

A. Yes, sir.

47 Q. What would you hitch to on the island?
A. To the trees; tighten up the rope on them.
48 Q. In what years was that?
A. I could not tell you.
49 Q. Early?
A. A good many years ago.
391 50 Q. Was it a steamboat or ferry-boat?
A. A steamboat.
51 Q. You have lived here in the city for quite awhile?
A. Yes, sir.
52 Q. Have you observed the island, more or less, ever since?
A. Yes, sir; four or five times a year I go to them islands.
53 Q. Have you been there very recently?
A. I was there yesterday.
54 Q. Did you go to this Island No. 2?
A. Yes, sir.
55 Q. Did you go over it any?
A. Not a great deal; I looked around some.
56 Q. Did you notice the west bank of the island?
A. Yes, sir.
56½ Q. State whether you found any trace of the old channel that ran between the islands?
A. Yes, sir.
57 Q. Where did you find that and what is there to mark it now?
A. Well, there is the shore of this island, the bank of the island.
58 Q. About what point?
A. On the west side of the island, of the No. 2 Island.
59 Q. Did you notice a little willow strip lying out of the island, west of the river?
A. Yes, sir.
60 Q. A little north, perhaps, from No. 3, the Island 3?
A. Yes, sir.
61 Q. North of that island?
A. Yes, sir.
62 Q. Where was the channel?
A. Well, right down there, from there into the little channel.
63 Q. You are speaking of it as you noticed it yesterday?
A. Yes, sir.
64 Q. Did you notice the roadway running from Waterloo street down near the end of the big island?
A. Yes, sir.
392 65 Q. Now, with reference to that, where are these marks of the old channel?
A. The road you mean that runs——
66 Q. From Waterloo street out onto the island.
A. Well, it is a little north of that.
67 Q. Now, state how the west bank of the island, north of that channel, up as far as Fulton street compares with the island as you knew it in the early years.
A. Well, it is the same as it used to be, only not quite as high; washed away a little.

The COURT:

68. Is this channel which you are speaking of the same one that you said was formerly 175 feet wide?
A. Yes, sir; from one island to the other. From No. 2 to No. 3.

The COURT:

69. What is the width of it now?
A. I should judge it was a hundred feet.

Mr. CAMPBELL:

70. At what point of it, what part of it?
A. Well, about the middle part of the island; I didn't examine very close.
71 Q. Did you notice any trees growing there?
A. Yes, sir; there is two trees there that stood there as long as I can remember.

The COURT:

72. Is there water there in that channel yet?
A. No, sir, there is not now.
73 Q. No water in it?
A. It has been filled up.
74 Q. I mean the channel between the two islands.
A. No, there is no water there; well there is a little between two and three that ran in there and shows where the channel used to be.

The COURT:

75. Now, has he reference to that little stream down there, or has he reference to that depression further north; this low place further north?
The WITNESS: This small stream, as I understand, lay between 2 and 3 Island.

The COURT:

76. Well, you knew the channel as it was there in the early years?
A. Yes, sir.
393 77 Q. And I ask from your examination of the premises yesterday if you discovered any traces of that channel?
A. Yes, sir.

The COURT:

78. North of the three large trees you have spoken of there; did you notice those?
A. Yes, sir.

The COURT:

79. Where was this trace of the channel with reference to them, north or south?
A. To the south.

Mr. CAMPBELL:

80 Q. I think the witness stated it was a little north of the roadway running from Waterloo street.

The WITNESS: Yes, sir.

81 Q. Do you remember where the ferry landing was across on the east side of the river?

A. Yes, sir; pretty near.

82 Q. Where was it?

A. Where it used to land?

83 Q. Yes, east of the river.

A. I should judge they landed about over where the Barnard-house barn is now.

84 Q. Now, leaving that place, that landing, to go across the river, what course would the ferry-boat or boat you used to ferry in go?

A. Well, they would start from there and land about there at the end of Fulton-street bridge on the west side.

85 Q. A straight course then across the river?

A. Yes, sir.

86 Q. In following that course how near did you go to the north end or head of this Island No. 2?

A. We wasn't very particular where we crossed there, between the two islands.

87 Q. Well, as usual, whether you would be nearer to Island No. 2 or above it?

A. Nearer to Island 2.

88 Q. State whether or not in those early days you ever went onto *to* the island at the north end of the island.

A. Did I ever go onto the north end of the island?

89 Q. Yes; I say at the north end.

A. Yes; numbers of times.

394 Cross-examination by Mr. BUTTERFIELD:

90 Q. In ordinary water did steamers ever go between the channel between No. 3 and No. 2?

A. Yes, sir.

91 Q. They used to go around the head of 3 and go through the channel to the steamboat channel?

A. Well, they used to go through from the northeast channel right up between them islands and go out into the main channel.

92 Q. That is between 3 and 2?

A. Yes, sir.

93 Q. That would be in high water?

A. Yes, sir.

94 Q. Now, how long is it since your attention has been called to the whereabouts of that channel until yesterday?

A. When was it called?

95 Q. Yes; prior to yesterday.

A. Well, yesterday I was down there.

96 Q How many years is it before yesterday that your attention was called to it?

A. Most every year as near as I can remember it.

97 Q. I mean to ask when your attention was called to it, anybody asking you about it, or saying anything to you about it?

A. I have talked about it a good many times, about the islands, etc.

98 Q. Now, do I understand you to say that this Island 2 was all covered with willows?

A. Yes, sir.

99 Q. The whole island?

A. Yes, sir.

100 Q. How was it, a low island or a high one?

A. Well, it wasn't very high or very low; it was quite an island; probably in low water it was four feet above the water; three or four.

101 Q. How long was this island, No. 2, above this channel between No. 2 and 3?

A. I should judge it was seven or eight hundred feet long.

102 Q. And how wide was it?

A. Well, I think it is—I should judge it was 125 feet wide.

103 Q. Wasn't it more than that?

A. I couldn't tell; I never measured it.

395 104 Q. Was it pretty often that you used to see it?

A. Yes; we used to go down and tie at the upper end of it.

105 Q. How far did it run below Fulton street as it now is?

A. How far did the island run?

106 Q. Yes.

A. Ran down to No. 3.

107 Q. How far was the point of it, the north point of it, below Fulton street as it now is?

A. I should think it was above Fulton street.

108 Q. Now, how do you fix Fulton street? there was no Fulton street there at that time?

A. No, sir.

109 —. How do you fix the point of Fulton street?

A. Well, the bank of the island shows for itself.

110 Q. Now?

A. Yes, sir.

111 Q. And you form your opinion of the limit of that island by what you see now?

A. No, but then I am pretty positive it runs above the Fulton-street bridge a little.

112 Q. You say that it shows now, so that you can tell what it was?

A. Not exactly, but pretty near.

113 Q. How long were you at that ferry?

A. How long was I?

114 Q. Yes.

A. I couldn't exactly say.

115 Q. Well, your best judgment?

A. Three or four years, I guess.

116 Q. When you was a boy?
A. Yes, sir.
117 Q. What did you do then?
A. When I was in the ferry?
118 Q. Yes.
A. Rowed boats across the river, taking passengers.
119 Q. What did you do after you quit ferrying?
A. I went to steamboating.
120 Q. Where did the steamboats run?
A. From here to Grand Haven.
121 Q. How long were you in that business?
A. Twenty-five years.
122 Q. How wide was that island at the lower end?
396 A. I could not tell you; I never measured it; quite wide, though. It was about double as wide as it was in the middle part of it, near.
123 Q. How wide was it in the lower end? Just give us your best judgment.
A. Lower end?
124 Q. Yes.
A. Well, I should judge it was eighty or ninety feet wide.
125 Q. How wide was the channel at that point, the steamboat channel?
A. Well, it must have been a hundred feet, not over.
126 Q. When did these trees that were around this island disappear?
A. They were knocked down by the ice—the willows.
127 Q. When did the trees disappear?
A. They disappeared in the spring when the freshet would be there; it used to knock the trees down. In high water it would go right over them.
128 Q. When did the ice commence to do that?
A. In the spring of the year or the last of March sometimes. Sometimes a little before.
129 Q. What year did it commence to do that?
A. It ran right along most every year until they built the dams across the river and broke up the ice.
130 Q. According to your statement every year when the water went down it would tear down the river and tear things up?
A. Every spring.
131 Q. What became of those maple trees that you talked about?
A. I didn't claim there was any maple trees there.
COUNSEL: All right; that is all.

Mr. CAMPBELL:

132 —. Was there any turf or grass growing on this island when you first knew it?
A. Yes, sir.
133 Q. How far along the surface of the island did it extend north?
A. Extended the whole length of it.

397 Mr. BUTTERFIELD:

134. And was also covered with willows?
A. Yes, sir.

Mr. CAMPBELL:

135. Where did the willows grow on the island, with reference to the edge of it?
A. Close to the edge.

Mr. BUTTERFIELD:

136. Didn't you swear a few minutes ago that it went all over the island?
A. Yes, went over the island, from one side of the island to the other.

DAVID LARAWAY sworn on the part of the defense.

Examined by Mr. CAMPBELL:

1 Q. You reside in this city?
A. I do.
2 Q. And have for how many years?
A. About eighteen months in this city.
3 Q. How long have you resided in this locality?
A. Fifty years.
4 Q. Where was your home prior to moving into the city?
A. In the township of Paris, not far from the city line.
5 Q. How far was it?
A. Two miles and a half, I think.
6 Q. Which way?
A. South and east.
7 Q. How long did you live there?
A. Pretty near all my life.
8 Q. What year did you come here then into Kent county?
A. In the years 1833 and '34. Winter of 1833 and '34.
9 Q. How old were you then?
A. Three years, in my fourth year.
10 Q. Where did your people settle?
A. In the township of Paris.
11 Q. And you have lived there ever since?
A. Yes, sir.
12 Q. Were you at any time employed on the river in the boat on the ferry?
A. No, sir.
398 13 Q. Do you know the present line of Fulton street or Fulton-street bridge?
A. Yes, sir.
14 Q. Did you know the locality at an early date when you got old enough to know anything about such matters?
A. Yes, sir.
15 Q. What islands were there in the river, about Fulton street when you first noticed it, the river?

A. Well, my recollection of those things is that there was islands there running over here by Sweet's hotel all the way down to that large island. That is, there was three up there, islands.

16 Q. Do you know the island known as the Holmes island or No. 3?

A. Yes, sir.

17 Q. The big long one?

A. Yes, sir.

18 Q. What was the island next north of it?

A. A little small island, I don't know the number of it; don't know how it was numbered; don't recollect.

19 Q. How far was it from the Holmes island; was there any channel between them?

A. I think there was, yes, sir.

20 Q. About how wide was it?

A. Well, I should think they would run anywhere from 75 to a 100 feet. It might have been a little more or a little less; I don't recollect distinctly the distance.

21 Q. Did you go onto this island any in the early days?

A. Yes. I have been onto that.

22 Q. When did you first go onto this little island you are now speaking of?

A. I was on it when I was 13 or 14 years old and frequently after that for a number of years, on all of them.

23 Q. How far did this little island run up north of the channel with reference to the present line of Fulton street?

A. Well, it ran up very nearly up to Fulton street, or pretty nearly there. We used to run the ferry up, started in from
399 what was known as the old red storehouse, just below it, and ferried across the river, that is the only way we could get across the river without it was very low water; sometimes we used to ford it. We used to run this ferry up between these two islands, between the one that lies opposite the Barnard property and this small island; used to run the ferry up between the two islands.

24 Q. Have you crossed on that in those early years?

A. Yes, sir.

25 Q. How near did you pass to the north end or head of this little island?

A. Well, I couldn't exactly state just the distance; it starting from the dock or landing, where we would start, we would pretty near swing down to it when we got that far into the river.

26 Q. You were speaking about the course of the ferry, with reference to that part of the island; I ask you if you have ever crossed and recrossed on the ferry in the early years?

A. I have; yes, sir.

27 Q. Did you notice the north end of the island the times that you went by there and were on the island?

A. Yes; I used to see it, of course.

28 Q. How was the surface of the island when you first knew it, with reference to turf and trees or anything growing on it?

A. Well, at the north or head of the island, on what we would

call the upper end of the island, it was washed a good deal with sand and water; the water worked against it a good deal, of course; as you went along down it rose a little, and there was some willows, some timber and some grass growing.

29 Q. What kind of timber?

A. There was soft maple and willow standing on it, and poplar.

30 Q. How near did the soft maples run to the north end of the island; how near did they grow?

A. I wouldn't say positive; I think along about the center of the island, and a little above there was several trees. There used to be quite a number of trees on this island.

400 31 Q. Have you been down there recently?

A. I was down there in the middle of January, and I was there within the last week.

32 Q. Did you find anything growing there that was growing there in the early days?

A. There is three trees there—a cottonwood, a poplar, and a couple of others, soft maples; I don't recollect distinctly whether one is an elm or not; there was three trees there; I think they were the same trees that used to stand there when I was quite a lad.

33 Q. Did you discover any trace of the old channel between the two islands when you went there the other day?

A. Yes; there was the form of the old bed of the river, I should judge.

34 Q. Where is that, with reference to these three trees?

A. There seemed to be an old landmark of the channel at the foot of this island, and also one above that would be distinctly recognized by persons that would be acquainted with the land.

35 Q. Did you go over the island the other day?

A. We went down there, but we didn't go over it particularly.

36 Q. Didn't go along the west shore of the island?

A. No; I went above it; I didn't go to examine it, as I did last winter. I was over there last winter to doctor a horse, and I was walking around there to while away the time, and I was there considerable.

37 Q. How does the surface of the island back aways, on the west part of the island, as you saw it in January, compare with the island as you knew it in the early years?

A. Well, there is all the island there; that is there entirely as it used to be.

38 Q. Which side is that?

A. The lower part of the island; the lower west part of the island seems to be very much in the same shape that it used to be when we used to go in there swimming when we were boys.

401 39 Q. And coming north toward Fulton-street bridge?

A. Well, you can see where the island was; you can see the shape of it, though it has been filled out a great deal on the inside; of course water works around over the edge of the island to a great extent.

40 Q. That is the west side of the island?

A. Yes, sir.

Cross-examination by Mr. BUTTERFIELD:

41 Q. I don't think I understood when you said you came here.

A. My father moved here when I was a child in the winter of 1833 and 1834.

42 Q. How old were you at that time?

A. Three years; going on four years.

43 Q. You say north of Island No. 3, Holmes island, there was a little island; what was the width of the channel between Island No. 3 and this little island, about.

A. I wouldn't undertake to state definitely; it might have been 75 or 80 feet; it might have been less, but there was a channel there.

44 Q. Do you know of steamers coming through the channel—boats?

A. Not positively; I went through the channel at one time between the two islands.

45 Q. Haven't you ever heard of it?

A. Not as I know of.

46 Q. Never heard anything about boats going through?

A. No, sir.

47 Q. How long was that island coming north of that channel in feet as you remember it? I don't ask you to give it by what you see now, but by your recollection of it as you were there when a boy; how long was it north and south?

A. Oh, my recollection of that would be anything from twenty to twenty-five rods.

48 Q. Now, was it low or high?

A. Well, it wasn't as high as Holmes island quite.

49 Q. The northern part of it was not as high as the southern part of it quite?

A. No, sir; I think not.

402 50 Q. Or was there very much difference?

A. Well, I think the lower part of the island, or about the center, was the highest point of the island.

51 Q. Now you spoke about there being two channels; did you ever know of another channel up across the end where that depression is north of the big tree?

A. I think in high water water used to work across there very rapidly.

52 Q. When was the last time? You say you were on there from year to year; were you on there repeatedly—that is so you would be acquainted with the changes in the island as they might occur?

A. Oh, it must be over twenty-five years ago that I noticed anything particular about this island.

53 Q. And up to that time you were on there frequently?

A. Yes, sir.

54 Q. It was covered, as I understand, chiefly with small timber—rapidly growing timber, was it not?

A. Why, there was willows, yes, and grass and some large trees.

55 Q. Were the willows all over it?

A. Well, not so big a growth; the willows grew along the water's edge, and inside where the timber grew thinner there used to be a finer growth of the willows, where we boys used to undress ourselves to go in swimming.

56 Q. It was low in there where those willows grew, wasn't it?

A. Not particularly low; all those streams were in the banks, excepting very high water; then it would go out in some places, and things kept moving around.

57 Q. Isn't that a continual process, as the current of the river made changes; things would change there?

A. Oh, frequently.

58 Q. That is your experience, anyway, isn't it?

A. Oh, yes.

59 Q. A few years will make a change so as to alter a
403 good deal the face of things, wouldn't it?

A. Why, it is liable to cut out holes, but where there is timber growing out it don't diminish an island, for it cuts out in one place and then fills up in the other.

60 Q. At the north end of this island I understood you to say that it ran low; lower than the center?

A. Yes, sir.

61 Q. And that the north half of it was covered with willows?

A. All along the edges of it.

62 Q. And whatever trees there were, were further down?

A. There were growing most over the lower part of the island; I don't recollect how many trees were on this island, but quite a good many.

63 Q. How far, as you recollect it, was the head of this little island south of the ferry as you went across; about how far?

A. I should judge from the channel there it may be from 100 feet to 150, more or less; I don't recollect distinctly.

64 Q. You went across by boat and the current drifted you downward, did it not?

A. Entirely; yes, sir.

65 Q. Now, I understand you to say that the south end of the island, between where the trees are and the south part, is just as it was when you remember it as a boy?

A. Well, there was grass growing there.

66 Q. You saw the surface of the soil was about the same; the height would indicate from appearance that it hasn't been washed there at all, wouldn't it?

A. Well, it don't show that there has been any particular change there.

67 Q. And with the exception of the willows and truck of that kind the surface presented is the same as it was when you recollect it?

A. Very similar as to the south end of the island.

JOHN MCCONNELL sworn on the part of the defense.

Examined by Mr. CAMPBELL:

1 Q. You reside in the city of Grand Rapids?

A. Yes, sir.

404 2 Q. And have lived here for how many years?

A. Since 1847.

3 Q. What has your business been generally?

A. Mercantile business; general merchandise and hardware, etc.

4 Q. Are you familiar with the premises in the city of Grand Rapids?

A. Yes, sir.

5 Q. With Fulton street?

A. Some, yes.

6 Q. I will call your attention to the east bank of the river at Fulton street; state when, with reference to your coming to Grand Rapids, you first noticed that part of the river?

A. Well, it was in June, 1847; I used to go down to the river hunting and fishing a great deal.

7 Q. What islands were there in the river about Fulton street, in the east part of the river, at that date?

A. Well, there was three or four islands from Pearl street down; several islands.

8 Q. Do you know the location of the island known as Holmes island or Island 3?

A. Well, that would be the lower island, Godfroy's island.

9 Q. Do you know that island?

A. Yes, sir?

10 Q. State what island there was, if any, immediately north of that in 1847?

A. Well, there was what was called No. 2, and north still No. 1.

11 Q. Just describe No. 1 as you saw it?

A. Well, it lay at the foot of Pearl street as near as I can recollect.

12 Q. Was it divided by any channel?

Objected to as leading. Question withdrawn.

13 Q. Just describe it as you saw it?

A. Well, it was a large island covered with bushes and trees and continued down to another island, a small island, and between them was a small channel, and then on the east of that was another very small island, and still beyond was the other island with a channel between.

14 Q. Is that the one you refer to as No 2?

A. No. 2; yes, sir.

405 15 Q. Now, between this one that you call No. 1 and Holmes island what island was there, if any?

A. Between No. 1?

16 Q. There was a second island?

A. There was what we used to call Second island.

17 Q. State whether or not that island was divided from Holmes island by any channel?

A. Yes, somewhere between the two islands.

18 Q. About what was the width of that channel when you saw it in 1874?

A. I should judge ten, fifteen or twenty paces.

19 Q. From that channel how far north did that island extend, say with reference to the present line of Fulton street?

A. Well, I think it came up to the quarter line, the section line; there was a small stream running in at Fulton street, or what is now Fulton street.

20 Q. On the east bank of the channel?

A. Yes, sir.

21 Q. What was the condition of the surface of the island as you first saw it?

A. Well it was covered with bushes and willows and trees.

22 Q. How recently have you visited that island?

A. Well, I was there the other day.

23 Q. Did you find anything growing that you remember there in early days?

A. I recognize the north channel of the Holmes island, that is between the two islands.

24 Q. How is that marked today?

A. Well, all I recognize was the bank and the place where the channel was.

25 Q. Is there any water in it now?

A. No; I think not. That ran down to the river, and there was but little water in it.

26 Q. That is on the west side of it?

A. On the west side of it; yes, sir.

27 Q. Now, in reference to the trees that are standing there
406 now, the three northerly trees, did you notice particularly any of the trees?

A. I didn't notice them particularly; in fact, I didn't notice anything except about the bank there.

28 Q. Did you go from that point north to Fulton street?

A. I did, sir.

29 Q. How does the west surface or the surface of that island on the west side, from that channel to Fulton street, compare with the banks as you know it in 1843 and 1844?

A. It was all covered with trees and bushes then. I couldn't remember. I used to travel around there a good deal with my gun, but I can't say about it.

30 Q. In the earlier days when you first knew it, was the island so you could go over it?

A. Yes, we went over it In going from Island 2 we couldn't get to the other island without going over the other, and there was a small stream running from that, and we used to walk down the east side of the island and jump over, and sometimes used to try to go to the lower island.

31 Q. That is Holmes island?

A. Yes, we called that the little island; I didn't know what number it was.

32 Q. State whether or not on the site of that there has been an island or there was an island extending as far north as Fulton street when you first knew the premises in 1847?

Objected to as leading.

A. Well, this little island is south of there, almost directly west of the quarter line of the section where the little stream came out.

33 Q. Didn't the quarter line strike the east bank? State whether or not there has been an island on that site from that time to the present time.

Objected to as leading.

A. I suppose it is there; I haven't noticed it.

34 Q. You haven't noticed it in the year since 1847?

A. Well, not much, sir.

35 Q. Haven't had much to do with that part?

407 A. No, sir; I used to fish along down on the east shore from Irving Hall's. There was three or four rods of the bank in the river; we used to fish from Pearl street down south in that stream.

36 Q. Where was that?

A. That was where Lyon and Water streets now stand.

37 Q. Did you ever cross the old ferry that was there?

A. I don't think it was existing when I came here.

Cross-examination by Mr. BUTTERFIELD:

38 Q. Now, just from what you remember, from your recollection of that little island as you saw it, tell me about how long it was?

A. I should think it was twenty or thirty rods or more.

39 Q. And how wide do you think it was?

A. Well, perhaps it was eight or ten rods in the center.

40 Q. And come to a point at each end?

A. Yes, sir.

40½ Q. And the points, both of them had willows on?

A. Well, the points did not, except the sides had willows on; the points ran off into the river.

41 Q. Like sand bars?

A. Yes, sir.

42 Q. Ran right off?

A. Yes, sir.

The Hollister Map.

Mr. CAMPBELL: I introduce this map of the city of Grand Rapids. It includes the part of the river in question and shows the lines made by J. Almy, civil engineer. It bears on the cover of it a notation, showing that it was presented to the Rev. J. Penny by W. A. Richmond, November 11th, 1842.

For objections to this map see cross-examination of defendant's witness, Joseph Penney, *post*.

ANDREW FYFE sworn on the part of the defense.

Examined by Mr. CAMPBELL:

1 Q. Mr. Fyfe, you reside in this city?
A. Yes, sir.
408 2 Q. And have for how long?
A. Eleven years.
3 Q. What official position do you hold?
A. Clerk of the superior court of Grand Rapids.
4 Q. Since when have you held that office?
A. Since May 7th, 1888.
5 Q. Of course, as such officer you have custody of the records and files of that court?
A. Yes, sir.
6 Q. Have you any records or papers relating to any proceeding for opening the intersection of Fulton street from Waterloo street to the Grand river?
A. I have, sir.
7 Q. Will you produce them, please?

(Witness produces same.)

A. These are the files in the case. I have the journal here, and the calendar containing the entries.

(Said records and files are offered in evidence. Objected to as immaterial and incompetent.)

Mr. CAMPBELL: I wish to call attention to certain papers. First, the petition filed on the 8th of September, 1883; next, the summons issued on the 8th of September, 1883; also a map of East Fulton street opening, signed H. A. Keller, city surveyor. Also verdict of the jury below, 23rd of January, 1884, assessing and awarding to the Grand Rapids & Indiana Railroad Company as the owner of so much of Island 5 in the Grand river, being part of section 25, town 7, north of range 12 west, as lies between the center line of East Fulton street, produced westwardly. The award was $25.

8 Q. Now, Mr. Fyfe, will you turn to the journal, please, and see what journal entries there are; have you reference to that?
A. Yes, sir.
9 Q. I will ask you if you find an order there confirming this verdict.

Mr. BUTTERFIELD: Was this the first or last proceeding?

Mr. CAMPBELL: I don't know anything about the reversal; that is the one on which the assessment was made.

409 WITNESS: I find it in Journal 5, page 310, in the proceedings of the 29th day of January, 1884, an order ratifying and confirming the verdict of the jury. Would you like to have it read?

Q. No, sir; just give us reference to it.

Mr. BUTTERFIELD: My objection applies to all these proceedings in this case as irrelevant, immaterial, and incompetent.

No cross-examination.

WILLIAM A. SHINKMAN, sworn on the part of the defense.

Examined by Mr. CAMPBELL:

1 Q. You reside in the city of Grand Rapids?
A. Yes, sir.
2 Q. What official position do you hold, if any?
A. City clerk.
3 Q. How long have you held it?
A. One year.
4 Q. You are the custodian, of course, of the papers and records of the city of Grand Rapids, pertaining to that office?
A. Yes, sir.
5 Q. Have you in your custody as clerk an assessment-roll for the opening and extension of East Fulton street from Waterloo street to the Grand river? If so, state whether or not that is the document.
A. Yes, sir.
6 Q. That is part of the records of your office?
A. That is part of the office record.

Mr. CAMPBELL: We will offer this. It is, "Assessment-roll for compensation awarded by jury for property taken to open and extend East Fulton street from the westerly line of Waterloo street to low-water mark in lower channel of the Grand river in the city of Grand Rapids. Filed in the office of city clerk, June 8th, 1885; ratified and confirmed by common council of the city, June 22nd, 1885."

Objected to as irrelevant, immaterial and incompetent, it not appearing that Mr. Butler had any relation to the proceed-
410 ings otherwise than as owner of the property affected by taxes imposed without his consent.

Mr. CAMPBELL: I will call attention to assessments on this roll against John Butler, the first one appearing on page 69, and is an assessment to him as owner of lot 8 on Summit street; and next on pages 73 and 74 against Mr. Butler, the first as owner of lot 5, Bryan & Ball's subdivision; next as owner of lot 6, same subdivision; next as owner of lot 7, same subdivision; next as owner of lot 8, same subdivision; next as owner of lot 9, same subdivision; next as owner of one-half of lot 13, same subdivision. On page 103 an assessment against the Grand Rapids & Indiana Railroad Company, as the owner of Island No. 5 in the Grand river, on section No. 25, town 7, north of range 12 west, in the city of Grand Rapids. The amount of the assessment is $850.

7 Q. On the assignment for the collection of these taxes, what is the course pursued?
A. A copy of the roll is delivered to the treasurer.

Objected to as irrelevant, immaterial and incompetent.

WITNESS: A copy of the original roll is delivered to the treasurer and he returns it with the money.

8 Q. With the return attached?

A. Yes, sir.

9 Q. When does he make his return of the roll?

A. After 90 days, or thereabouts, back to the clerk.

10 Q. Is this the original assessment-roll?

A. Yes, sir.

11 Q. Can you produce the copy that was issued by the treasurer and returned by him?

A. I think I can.

12 Q. Just look and see if you can; and bring it over if you will, please.

Cross-examination by Mr. BUTTERFIELD:

13 Q. You have been clerk one year?

A. Yes, sir.

14 Q. Your knowledge of the routine of the office and the course of its business has been obtained during that time?

A. Yes, sir.

411 15 Q. You know these matters which you call the clerk's assessment, etc., have changed from time to time, have they not, as the charter of the city has changed?

A. I think they were formerly returned to the marshal.

GEORGE C. PIERCE, sworn on the part of the defense.

Examined by Mr. CAMPBELL:

1 Q. Mr. Pierce, you reside in the city of Grand Rapids?

A. I do, sir.

2 Q. And have for how many years?

A. Forty years.

3 Q. What is your present occupation or business?

A. My particular occupation is cashier for the trustees of the Grand Rapids & Indiana Railroad Company.

4 Q. As such cashier state what papers you have custody of?

A. I have custody of all papers pertaining to the sale of lands granted by the Government to the Grand Rapids & Indiana Railroad Company, and all disbursements made on that account and am the disbursing officer.

5 Q. I call your attention directly here to certain vouchers and tax receipts. State whether those are in your custody as cashier?

A. They are, sir.

6 Q. How long have they been so?

A. They have been in my custody as cashier since July 1st, 1876. Prior to that time as a clerk for the commission.

7 Q. I see they bear dates of different years?

A. Yes, sir.

8 Q. And did they come to your hands in the different years according to their dates?

A. Yes, sir.

Mr. CAMPBELL: I offer these tax receipts. The first one I offer is the receipt of Patrick Brady, collector of the First ward, city of Grand Rapids, dated March 19, 1875. "Received of the Grand Rapids & Indiana Railroad Company the sum stated below for taxes assessed upon the following-described tract of land in said ward for
412 the year 1874. Island No. 5, total sum of all the taxes for the time, stated $15.54."

I also offer receipt on the same property to same company for the year 1875, 1876, 1877, 1878, 1879, 1880, 1881, 1882, 1883, 1884, 1885, 1886, 1887, 1888, 1889.

All of the above receipts are objected to as irrelevant, incompetent and immaterial.

Mr. CAMPBELL: I next offer receipt dated July 30th, 1885, of the city marshal, charges against the Grand Rapids & Indiana Railroad Company for building walk on East Fulton street in front of Island 5, $53.34.

Same objection.

Mr. CAMPBELL: I next offer receipt by the city marshal, dated August 5, 1885. "Received of the Grand Rapids & Indiana Railroad Company, eighty-four dollars, being amount of assessment assessed upon Island No. 5 in the Grand river, section 25, town 7 north, range 12 west, city of Grand Rapids, in the assessment-roll for opening and extending East Fulton street. Amount of taxes $850.00. Fee of four per cent. $34.00."

Same objection.

Mr. CAMPBELL: I next offer receipt from Arthur Meigs, city treasurer, dated June 8th, 1886. "Received of the Grand Rapids & Indiana Railroad Company amount stated below, which is $55.00, that being the amount of assessment assessed upon the following premises, in the assessment-roll for the grading of Waterloo street from East Fulton street to Cherry street. The premises assessed are a part of Island No. 5 in Grand river, on section 25, town 7 north, range 12 west, in the city of Grand Rapids, which lies south of the center line of East Fulton street."

Same objection.

Mr. CAMPBELL: Here is a number of papers attached together with mucilage, indorsed record No. 20. One paper is a state-
413 ment by Ralph Ely, dated Oct. 14th, 1875, in which there is an entry of Island No. 5, section 25, township 7 north, range 12 west, not returned.

Same objection.

9 Q. This has been in your custody?

A. Yes, sir.

10 Q. I want to ask you here if you know as a matter of fact when the lands in the railroad land grant were first assessed for taxes by the city?

A. They became taxable in 1873.

11 Q. I think there was a statute passed that year, wasn't there?
A. I couldn't answer that question.

Objected to as incompetent.

12 Q. You don't remember when the law was passed?
A. No, sir; I don't know.
13 Q. State whether or not your recollection is that it was in or about the year 1873?
A. My information is that it became taxable within certain limits in 1873; that was contested and subsequently affirmed.

Cross-examination by Mr. BUTTERFIELD:

14 Q. State whether or not if you have had charge of these for the last few years.
A. Yes, sir.
15 Q. State whether or not during the years you have had charge there was a supervisor called at your office and demanded descriptions of that property as taxable?
A. He has not.
16 Q. You had never given him any descriptions?
A. No, sir.

Mr. BUTTERFIELD: I will admit that the Grand Rapids & Indiana railroad lies east of this property in question less than a quarter of a mile, but that that place where it does run east of this property in question is more than a quarter of a mile south of Bridge street.

Mr. CAMPBELL: And it has nothing to do with this location in respect to Bridge street.

Mr. BUTTERFIELD: That it is within a line run laterally
414 from the line of the railroad and west of it less than a quarter of a mile.

W. A. SHINKMAN, recalled on the part of the defense.

Examined by Mr. CAMPBELL:

16 Q. What is the book you now have in your hand?
A. The assessment-roll for compensation awarded by the jury in the main channel of the Grand river in the city of Grand Rapids.
17 Q. Is that the one that the treasurer had which has been returned by him for the collection of taxes on that roll?
A. Yes, sir.

Said roll with return and papers attached to it are offered in evidence.

Objected to as irrelevant, immaterial and incompetent.

Mr. CAMPBELL: The entries are on pages 69, 73, 74 and 103.

JOHN DORIS, sworn in rebuttal.

Examined by Mr. BUTTERFIELD:

1 Q. Mr. Doris, when did you come to Grand Rapids?
A. I came in May—May 18, 1845.

2 Q. Where have you lived since then?

A. Well, I have lived in different places.

3 Q. Most of the time where have you lived?

A. A great deal of my time has been on Waterloo street. I first lived on North Waterloo street pretty near to the east side of the street; I built a house there in 1846 and got in there.

4 Q. How long have you lived there?

A. I can't remember when I moved from there. I moved on Canal street; I think it was some five, six or seven years I lived there.

5 Q. When did you move to your present residence on Waterloo street?

A. About nineteen years last fall.

6 Q. What is the description of the lot on which you live?

A. Now?

415 7 Q. Yes.

A. It is called the southwesterly half of lot 13 in Bryan & Ball's addition.

8 Q. The addition to the village as it was?

A. On Waterloo street.

9 Q. How far is it from where Oakes street crosses Waterloo?

A. It isn't more than perhaps two hundred feet; only four lots there. There might be some fraction, but not much out of two hundred feet.

10 Q. How far did the back end of your lot extend?

A. Well as far as the water's edge, the river's edge.

Objected to as incompetent and immaterial.

11 Q. How far back have you been cultivating the land and in possession since you went there?

A. I cultivated as far as low-water mark, with the exception of a little dibble that I filled in.

12 Q. Has the low-water mark gone further west since you were there?

Objected to. Objection overruled.

A. Further west?

13 Q. Yes.

A. Yes, it has went west, I guess not much out of four hundred feet from where it was when I came there. It is reduced as much as 400 feet; I think over.

14 Q. Now, you know No. 3, don't you?

A. Yes, sir.

15 Q. How long have you known it?

A. It is my impression I knew it the first when I came here. I was a little curious to go onto it. I think it is the same as when I came here.

16 Q. Have you known it since that time, since you first came here; have you known Island 3?

Q. Yes, sir.

17 Q. How far is the head of Island 3 from the place right where you live?

A. Well, as near as I can calculate, there was a soft maple tree there; it stood like it was about four or five feet from where the south line of that land was; four or five feet south.

416 18 Q. Four or five feet south of the south line of your lot?

A. It may be more or less; I know it wasn't much.

19 Q. Do you know the big trees on the island now, the big trees; the big trees back of your premises?

A. Yes, sir.

20 Q. Where did the channel north of Island 3 run since you have been there? Did it run north or south of that tree?

A. It was north of the tree.

21 Q. You speak of a maple tree on the north end of Island 3. What became of that maple tree?

A. It was knocked down for firewood.

22 Q. How long ago was that?

A. Quite a number of years; I can't tell.

23 Q. Do you know the little channel that is south of those trees now?

A. I know a little low spot, but whether it was a channel or cutout I wouldn't say. I wouldn't call it a natural channel, because I have been onto it when there was no water.

24 Q. But then there was water?

A. I wouldn't call it a channel, a low place; I used to cross there, or below there, and it was pretty near in the center of that place; there is a willow there and trees, and I caught hold of them.

25 Q. I understood you to say there was a willow there, or a tree, that stood in the middle of that little depression?

A. Yes; I think that is in the center.

26 Q. Since you have been there has the land increased north of the north end of Island 3, and how much has it increased? Between Fulton street and the north end of Island 3 there is a maple tree that you cut down, is there more or less land than there was when you went there?

A. From there out——

27 Q. To Fulton street?

A. I didn't discover any more; I have been over it a great many times, across back where Fulton street passes into the river;

417 I started on the ferry-boat, and I crossed there a good many times in those years, and I didn't discover anything, only water, high water, between Islands 2 and 3, and if there was anything there I would see it; neither tree, bush nor nothing of the kind.

Cross-examination by Mr. CAMPBELL:

28 Q. You own the south half of lot 13, do you?

A. Yes, sir.

29 Q. Have you any interest in this suit?

A. No, no more than enough to tell the truth, the whole truth and nothing but the truth.

30 Q. You know what this suit is about, don't you?

A. I guess I do; yes, sir.

31 Q. Have you made any arrangement with Mr. Butler to pay any of the costs of this suit?

A. No, sir.

32 Q. Do you expect to?

A. No, sir.

33 Q. Have you had any talk with him at all?

A. Well, I talked with him frequently, whenever I meet him or see him.

34 Q. Did you know when he brought this suit?

A. I heard about it.

35 Q. Did you talk to him about it before that; about his bringing suit to claim this island?

A. I don't think he let me know anything about his going to bring the suit; I think not, because he didn't generally consult with me.

36 Q. You are friendly with Mr. Butler?

A. Why, yes; I am friendly with every good man.

37 Q. When did you first cross the ferry on the Grand river?

A. I couldn't tell you exactly the day; I will come as near as I can to it; I came here about the middle of May, as near as I can calculate; the next Sunday I went across on the ferry-boat, going to church.

38 Q. On the west side of the river?

A. Yes, sir.

39 Q. Where did that ferry start from, from the east bank?

418 A. Right, as near as I could figure, from the end where Fulton street now passes into the river, where the bridge is.

40 Q. The present line of Fulton street?

A. Right south of where the Barnard house now stands.

41 Q. In crossing the river how far from your line of crossing would you land to the south?

A. I couldn't state exactly; in going across we held the boat up pretty well; had to go down a little in going across stream, in going to the Indian settlement; we would come clear to the head of 3, then we would go across from Fulton street, and, as a general thing, I think, we only crossed the upper island since I came here, right south of Fulton street.

42 Q. Take a straight line across the river from that point on the east bank, how near would the east line pass to the head of dry land? Any dry land?

A. Straight across?

43 Q. Yes, a straight line from the ferry over, how far would that pass from the north end of any land that is visible in the river?

A. I am not certain; about 650 feet as near as I could get at it.

JAMES D. LYON, sworn in rebuttal.

Examined by Mr. BUTTERFIELD:

1 Q. You reside in the city of Grand Rapids?
A. Yes, sir.
2 Q. How long have you resided here?
A. I came here in 1841, the spring of 1841, and have lived here with the exception of about ten years I was away, the last ten years; I was back here for a year and a half.
3 Q. Do you remember the Fulton-street ferry?
A. Yes, sir.
4 Q. Where did that ferry start?
A. About where Fulton street strikes the river now.
5 Q. How frequently did you cross that ferry in those days?
A. A good many times, not only on the ferry, but I forded it on horseback and in a wagon.
419 6 Q. That used to be the ordinary and customary way of fording the river, prior to the building of the bridge?
A. Yes, sir.
7 Q. Now, in going on the ferry how far was it on the left-hand side after you got out going across down to the head of any island, wasn't there an island below?
A. Yes, sir.
8 Q. About how far down was it?
A. I should judge it was 15 or 20 rods.
9 Q. What was the character of the island that you then saw, was it a low island?
A. Low island. The upper end of it was low.
10 Q. Covered with willows and bushes?
A. Yes, sir.

Objected to as leading.

11 Q. Was the upper end of it sandy?
A. There was no water. There was a sand bar on the upper end, a low bar.

Cross-examination by Mr. CAMPBELL:

12 Q. Mr. Lyon, did you ever have anything to do with running the boats, with the old ferry or steamers?
A. Not with the ferry.
13 Q. Did you with the steamers?
A. Yes, sir.
14 Q. Do you remember the east channel of the river, coming in east of the big island along up here by the warehouses?
A. Yes, sir.
15 Q. Have you passed through that channel?
A. Yes, sir.
16 Q. In the steamer?
A. Yes, sir.
17 Q. When did you first, as near as you can remember it?
A. I think in 1842.

18 Q. Where was the steamboat landing then?
A. The regular landing was at Godfroy's warehouse.
19 Q. Where did that come?
A. Just above where the ferry was.
420 20 Q. North of the present line of Fulton street?
A. Yes, sir.
21 Q. Do you know the island called by some No. 3? And known by others as Holmes island, do you know where that island is?
A. Yes, sir.
22 Q. Have you any interest in that island?
A. No, sir.
23 Q. Not connected with it?
A. No, sir.
24 Q. That island was there, I suppose, in 1841 when you came here?
A. Yes, sir.
25 Q. Now, this island that you speak of that the ferry crossed 15 or 20 rods north of, was that the upper end of Island 3?
A. I don't know anything about the islands.
26 Q. Well, Holmes island?
A. I think it was.
27 Q. Was there any land between the north end of the island and the ferry landing then?
A. No, sir.
38 Q. With reference to the present line, where do you fix the head of Island 3 as you knew it in those early years with reference to the line, say, of Oakes street?
A. I don't know where that strikes the river.
29 Q. The second street south of Fulton street—Fulton, Island and Oakes?
A. I can tell if I saw the map.
30 Q. You can't state now without seeing it?
A. No, sir.
31 Q. Was there any island in those early years north of this Holmes island?
A. I don't recollect; it seems to me it was all one island; I don't know but there was a little channel running across there.

JOHN BUTLER, recalled in rebuttal.

Examined by Mr. BUTTERFIELD:

390 Q. I call your attention to the fillings on the island; there was several besides yours, was there not? there was fillings over this land that is called an island.
A. Yes, sir.
391 Q. There is back of you a little pasture, is there not?
A. Yes, sir.
421 392 Q. Who put that fence there?
A. I caused it to be put there; I directed it put there.
393 Q. Who is in occupation of that as a pasture?

A. Mr. John Grant.

394 Q. A tenant of yours?

A. No; he is not a tenant any further than that pasture is concerned.

395 Q. You let that pasture to him?

A. Yes; he came to me and said he wished to get it and I let him have it.

396 Q. Now, there are barns below you and sheds on that island, are there not?

A. Yes, sir.

397 Q. And there is a little sort of a factory there, is there not?

A. Yes, sir.

398 Q. Was that on what is called the island?

A. Yes, or a portion is what, I understand, the railroad company claims is an island there on these lands.

399 Q. Below you there is a large filling stretching out almost the entire length of the island?

A. What?

400 Q. Below your filling there is a large high filling stretching clear back almost to the river's edge, isn't there?

A. Oh, yes.

401 Q. Who put that there?

A. Well, that has been permitted, I suppose, by people there; there is a widow woman there, and, I think, two.

402 Q. Has that filling been done by the owners of the land or the railroad company?

A. That has been done by the owners of the land, as far as I know.

403 Q. Do you know who the supervisor of the First ward is, or who has been, for the last few years?

A. John Steketee has been.

404 Q. How many years has he been supervisor?

A. Quite a number.

405 Q. What, if any arrangements, have you ever made with the supervisor as to the assessment of the whole of your premises back to the river to you?

A. I have requested them to assess my property just as it
422 was assessed before I heard of any railroad company having any claims there or anything of that kind, as usual. I heard afterwards, by report, of the railroad company claiming an interest in the sand bar back there.

406 Q. State whether or not you informed him that you were willing to pay taxes on that property as you occupied it, clear to the river?

A. That is the language in substance.

407 Q. What did the supervisor say, if anything, to that request?

A. When he asked me the way I got at the fact of my property, of what it was, I gave him my property, and that ran to the river, to the center of the river, and I asked him how he assessed it, whether he assessed my property right through, and he told me that he assessed Island No. 5 to the railroad company, and then I told

him I was able and willing to pay my taxes, and I would consider it my property. The last time I spoke to him about it I asked him again if during his term of office he always continued to assess that property to the railroad company? He said Yes, but it will give them no title, and it will make no difference to you; the last time I spoke to Mr. Steketee he said that that wouldn't affect me, because it would give no title; that was his answer.

408 Q. How did he say he came to assess that property to the railroad company?

Objected to as incompetent and hearsay. Objection overruled.

A. I asked him why he had assessed that in that way as long as the lands were there. Was he afraid to get his taxes? I was able and willing to pay the taxes. He said that the railroad requested him, and he didn't think it would effect me in any way.

409 Q. Requested him to assess that to them?

A. Yes, the railroad company had requested him to assess it, and that is the reason that he done it.

423 Cross-examination by Mr. CAMPBELL:

410 Q. How long has Mr. Green been using this place in there?

A. This pasture?

411 Q. Yes.

A. I think he built the fence there inside of two years a little.

412 Q. That is a cheap, temporary fence, isn't it?

A. Oh, it is a temporary fence, yes, sir.

413 Q. What property owner on Waterloo street had ever done any filling on this island?

A. Well, William B. Ledyard.

414 Q. Where?

A. He made what you might call improvement, because he put in solid earth.

415 Q. Now, this back filling?

A. Oh, that back filling, that is done by these two widow women.

416 Q. You mean it is permitted by them? They are not paying any one to haul it in there, probably?

A. Well, I suppose not.

417 Q. It is a general dumping ground?

A. Yes, sir.

418 Q. Now, you have spoken of barns. Is there anything anywhere on this island except little temporary sheds, little small cow sheds and things of that kind?

A. Well, they are rather temporary buildings; well, there has been a large barn moved on within a few days; I guess it will cover some of that that the railroad company is claiming.

419 Q. Mr. Butterfield referred to a factory there. That is a little bit of a 7 x 9 affair down there at the south end, isn't it, about as big as a freight car?

A. It isn't a very extensive affair.

420 Q. Isn't it an old treasurer's box of a circus that was here,

that has been hauled down there, and isn't there a sign on it now, "Tickets for sale here," something of that kind? Did you notice that?

A. I don't know; that might be.

421 Q. It was hauled on there, wasn't it, not built there?

A. I don't know but it was built there.

424 422 Q. Don't they have circusses around there, below there sometimes?

A. Yes, sir.

423 Q. Isn't this a wagon of a treasurer of a circus out there that they left up there? That is what you mean by a factory, isn't it?

A. Are you referring to a building up to the line of Waterloo street?

424 Q. No. Mr. Butterfield is referring to a factory on the island. Now, what do you mean by that; is it this little one I am referring to?

A. Well, I am not sure that that there is something of that kind. There may be. I never went in there; I have seen it from a distance; I can see it from my back porch; I have seen the steam pipe; steam coming out.

425 Q. You couldn't get in there when there was anybody else in there, could you?

A. It was a very small factory.

426 Q. The man don't pay you anything for the use of it, does he—Mr. Green?

Objected to as irrelevant, immaterial and incompetent.

A. Well, the consideration was this. I considered him an honest man, and I thought it would pay me to consent to let him take it; people used to come around there and I have been annoyed very much; they would come across there and say, "This is not your land," and they would let their cattle and horses be brought right through my property there and declare that I had no more business than they had there. I said to Mr. Green that in consideration—he being an honest man, as I consider and believe he is—if he would fence that in so it will hold the cattle, and put in a horse and cow, to accommodate you, and shut off those that claim to come in there in defiance of me, I would let him have it; that is the consideration.

427 Q. When did you first talk with the supervisor of the First ward about this land?

A. When I first got the report that there was a railroad company claiming it.

425 428 Q. You said you wanted the land assessd and as they had been assessed all the time?

A. Yes, sir.

429 Q. Didn't you ask him to describe that land as running to the centre of the river and he said he would not do it; isn't that it?

A. I told him that my land did run to the center of the river?

430 Q. You wanted him to describe them so?

A. Yes, sir.

431 Q. And he said he wouldn't?

A. No; I don't know that he said he wouldn't.

432 Q. Well, he didn't?

A. Not long afterwards—I heard that he assessed a portion there to the railroad company, and I asked him again.

433 Q. You didn't talk with him about it until you heard that the railroad company was paying taxes, did you?

A. No, sir.

434 Q. Never had occasion to talk about it before that?

A. I didn't know anything about it.

435 Q. Haven't these premises of yours always been described as lots 5, 6, 7, 8 and 9 in Bryan & Ball's subdivision?

A. Yes, I think so.

436 Q. According to their plat number without reference to their lines?

A. Without reference to their length or width.

Redirect examination by Mr. BUTTERFIELD:

437 Q. State whether or not, ever since you have been there, the people owning lots on Waterloo street and running back have been in undisturbed possession of those premises equally with yourself of the land back of their houses to the river.

Objected to as incompetent and calling for a conclusion.

A. I never have known of any one being disturbed in their rights.

438 Q. What are the uses to which it has been put; pastures and gardens by the people who owned the land?

426 A. Oh, they have gardens and pastures and things of that kind.

439 Q. Take it back to the edge of the water; is garden stuff raised there?

A. Something in the way of garden made on that, clear back to the water, for a good many years.

440 Q. By your tenant?

A. By my tenant as well as Mr. Doris'. He had some before this tenant came. When he came he says, "It is no more than fair that he has it," and he gave it up to this man.

Mr. CAMPBELL: You say, Mr. Butler, that the upper portion of the island there has been used for pastures and gardens ever since you have been there?

A. No; I don't mean to be understood as to that.

441 Q. What do you mean to say?

A. Well, now, if I understood Mr. Butterfield, the property that has been owned there that they bought in the first place, running from Waterloo street westward towards the water's edge, whatever there was, had been used for gardening and various purposes, but when they got to the water they stopped, they couldn't go further; about like that.

PATRICK J. BRITTON sworn in rebuttal.

Examined by Mr. BUTTERFIELD:

1 Q. You reside in the city of Grand Rapids?
A. Yes, sir.
2 Q. How long have you resided here?
A. Thirty years, off and on.
3 Q. During any of that time what official position did you hold in the first ward?
A. Supervisor of that ward.
4 Q. For how many years were you supervisor?
A. Four or five.
5 Q. About what years were they?
A. I think 1871, if I recollect right; '71 or '72, probably the first year; I think it was '71; I am not positive about that.
427 6 Q. And the years next following?
A. Yes, with the exception of one year that William Reardon came to be supervisor.
7 Q. What year was that?
A. I think 1874—1873 or 1874.
8 Q. Did you know Mr. Hughes, the attorney of the Grand Rapids & Indiana Railroad Company, in his lifetime?
A. I did, sir.
9 Q. Do you know the piece of land on the shore of Grand river, south of Fulton street, which was claimed as Island No. 5?
A. Yes, sir.
10 Q. Did you have any conversation with Mr. Hughes in reference to that island and your duty as supervisor?
A. Mr. Hughes rode up to my house when I was nominated for supervisor, and commenced to assess the property, and he had a talk with me about that piece of property.
11 Q. What did he say about it?
A. He stated that it belonged to the Grand Rapids & Indiana Railroad Company and wanted me to assess it to that company.
12 Q. Was that assessment of Island 5, made to them in accordance with that request?
A. I think so; yes, sir.
13 Q. You did as he requested you to?
A. Yes, I assessed it for the benefit of the city at large.

Mr. CAMPBELL: I make a formal objection to this evidence as to the statements of Mr. Hughes as incompetent under the statute which makes the testimony of a survivor incompetent, where the agent of a corporation is deceased.

14 Q. Now, do you know Dennis W. Bryan?
A. I do, sir.
15 Q. Did you have any conversation with him in reference to the lots on his plat with a view to purchasing them?

Objected to as incompetent and immaterial.

A. I had.
16 Q. What was that conversation?

428 A. I wanted to buy one of those new houses that he built there near where Mr. Butler bought and Arthur Meigs bought.

17. The COURT: Was this conversation with Mr. Bryan?

WITNESS: Yes, sir. I wanted to purchase one of those houses when it was built, and in speaking of the lot, whatever the width and front was; he told me that it extended back to the middle of Grand river, that was what he was giving a deed for; I asked him would his deed be good, and he said he would make that deed good in spite of the world.

18 Q. Do you know where that was? That was part of this upper lot on West Waterloo street; between Waterloo and Oakes street, wasn't it?

A. Yes, sir.

19 Q. Can you fix the date of that conversation with Mr. Bryan?

A. I think the fall of 1871; it was after the Grand Rapids & Indiana railroad ran in here; I was building the road, and after finishing my contract I wanted to buy a house here.

Cross-examination by Mr. CAMPBELL:

20 Q. When did you have this talk with Mr. Hughes?

A. After I was nominated supervisor, and commenced to assess property.

21 Q. In the spring of the year?

A. Yes, sir.

22 Q. Of your first year?

A. I am not positive whether it was 1871 or 1872, Mr. Campbell.

23 Q. Now what did Mr. Hughes say to you by way of describing the property, what did he say that the railroad company owned?

A. He spoke about this island, that it was the property of the Grand Rapids & Indiana Railroad Company and wanted me to assess it to them.

24 Q. Did he go and show you any island?

A. No; he told me where it was.

25 Q. You knew where it was?

A. Yes, and he also spoke to me about other properties that he claimed should be exempt from taxation and spoke to me
429 in general about property that the Grand Rapids & Indiana railroad owned.

26 Q. How did he designate this island, as Island No. 5?

A. I don't remember now.

27 Q. Where did the island lie; did you understand?

A. I did, perfectly well.

28 Q. Where did it lie?

A. South of Fulton-street bridge.

29 Q. And north of the big island?

A. Yes; that was assessed to Jim Miller all the time.

30 Q. The big island was?

A. Yes, sir.

31 Q. How wide was the channel between the little island and Miller's island in 1871?

Objected to as not cross-examination.

A. In high water there would be some water between the west part of the island and the east part of the land there; in low water it would be dry.

32 Q. Whereabouts was this channel?

A. About the middle, I should say. About half way between that and Waterloo street, and probably about 200 feet back from Waterloo street, the channel was.

33 Q. The east channel? And where was this channel between the island with reference to the line of Oakes street?

A. Well, Oakes street is south of it, and Island street is next to it.

34 Q. You have spoken of a channel between the two islands?

A. Oh, this was a water-way that used to be there; it was nearly filled up at that time; it used to be there in early days.

35 Q. How far did this little island then run north from this island?

A. What island?

36 Q. I mean from the channel north of the Miller island?

A. I don't exactly know; not a very great distance.

37 —. Did it run to Fulton street, as it is now?

A. No; there was an island there in 1871; hard land.

430 38 Q. This land, I tell you, at the rear of Bryan's there, extended out a good distance, and this water-course was about the center of it, and there was land beyond it.

39 Q. Which way did the water-course run?

A. It ran the same as the river.

40 Q. North and south?

A. Yes, sir.

41 Q. And how wide was that water-course in 1871?

A. I tell you in low water there would be no water in there. It was beginning to get dry between the land west of Waterloo street and this island. It was all nearly one piece of land then.

42 Q. How wide was the island then, about?

A. Not very wide; probably twelve rods or sixteen rods.

43 Q. How long was the island then?

A. It was a small piece of land that appeared when the water would be low in the river; if it was considered an island.

44 Q. You assessed it as Island 5, didn't you? Wasn't that the description?

A. Yes sir.

45 Q. Where did you get that number?

A. From the records of the island; the big island was called No. 1, and this No. 5, and the other islands, I guess, were all numbered in order, to designate them; I guess that was the idea.

46 Q. Now, is there any channel or water-way between those two islands? Between this 5 and the big island below?

A. There was, sir.

47 Q. How wide was that channel in 1871?

A. I don't remember; they filled it in and made a street out there.

48 Q. Down from Oakes street?

A. Yes sir.

49 Q. How far was it from—do you know where Mr. Butler's lots were, from 5 to 9 on that subdivision?

A. Yes, sir.

Objected to as not cross-examination.

50 Q. Do you know where his premises are?

A. I know where his house is.

431 51 Q. Take that along there, how far was it from the back end of these lots; the hard land running back from Waterloo street across this channel to the island beyond; how wide was the channel there then?

Objected to as not proper cross-examination.

52 Q. About how wide was that channel then?

A. You mean that that was running between what was designated as the island and the main land?

53 Q. Yes, sir.

A. One summer there was no water in it; it was dry and filled with sand; in high water there would be some water in it.

54 Q. It was plainly marked; it was lower than the land east of it and west of it?

A. Yes, sir.

55 Q. Was there a mark of a channel or a water-way there?

A. Yes, sir.

56 Q. How wide was that?

A. Probably three or four rods.

57 Q. From the back end of the hard land along Waterloo street?

A. Yes, sir; it was filling up all the time. Now, there is no appearance of a channel at all in there, and then back of Butler's house it was three or four rods wide.

58 Q. It is a hollow where the water used to run?

A. Yes, sir; and in low water there was no water running, as I remember, at that time, and Bryan was deeding out to the middle of the river.

59 Q. How do you know that; did you ever read one of his deeds?

A. He told me what he would give me a deed to.

60 Q. Bryan never gave any deed, except by lot numbers, on his plat, did he, that you know of?

A. No; I guess he had them numbered.

61 Q. What was Bryan talking about the middle of the river for?

A. In selling me the house and lot.

62 Q. How did the question come up; did you suppose that ran further than this island?

432 A. I didn't think there was any use of my getting a deed out into the middle of the river, but he said he owned the land to the middle of the river.

63 Q. Did you have this island in mind at the time; you knew there was dry land beyond the channel; is that what you were asking about; do you know whether that deed ran as far as that?
A. I knew it carried me across this island.
64 Q. How?
A. Because the island was there; it was part of the land that he claimed.
65 Q. Because the channel was dry?
A. Yes; he claimed the island, and that ran out to the middle of the river.
66 Q. Did you ever go onto this Island 5 at any time?
A. Yes, sir.
67 Q. When were you first on there?
A. A long time before that.
68 Q. About how long before?
A. Oh, I don't know.
69 Q. Can't you give us your best judgment?
A. I was on it 40 times; I went after cows on it; my cow used to go on it.
70 Q. How many years ago?
A. Oh, 15, probably.
71 Q. Fifteen?
A. Yes, or more.
72 Q. When did you come to Grand Rapids?
A. I came in 1854, first, sir.
73 Q. How long after your arrival in 1854 was it before you made your first visit to this Island 5?
A. I don't know.
74 Q. About how long?
A. I couldn't tell you how long.
75 Q. Was it within one or two years?
A. I couldn't tell, I often went down on them islands.
76 Q. Was Island No. 5 there when you first came here?
A. I suppose—yes, I remember it, that piece of land there; I didn't know what they called it then.
433 77 Q. You have since known it as Island No. 5?
A. Yes, sir.

JAMES L. RUMSEY sworn in rebuttal.

Examined by Mr. BUTTERFIELD:

1 Q. What is your profession?
A. Surveyor.
2 Q. How long have you been engaged in that business?
A. 15 years.
3 Q. Have you at any time been engaged in United States survey?
A. Yes, sir.
4 Q. Where?
A. In Oregon.
5 Q. How long have you lived in the city of Grand Rapids?

A. 35 years, about. I have been away some of that time, but I consider this my home.

6 Q. Were you ever asked to make a survey of Island 5?

A. Yes, sir.

7 Q. What is called Island No. 5?

A. Yes, sir.

8 Q. To see if you would run according to the notes?

A. Yes, sir.

9 Q. I suppose from Fulton street down to about Wealthy avenue it is continuous dry land, is it not, on the east side of the river?

A. Yes, sir.

10 Q. There is no island there at present?

A. No, not at the present stage of the water, at least.

11 Q. State whether or not that land as it at present appears is filled in different places?

A. Yes, sir.

12 Q. I call your attention to the southern end of the island. Did you run down the line to the point where the straight line is there on the southern end of the island?

A. Yes, sir.

13 Q. I will ask you how that land compares in height with the rest of the land covered by that plat, whether that is the highest natural point on that whole island?

A. I should say it was.

14 Q. Is there any depression or channel which appears to be there?

A. There is a channel on the east of it.

434 15 Q. And is there anything south of it or immediately north that would indicate that an island ever terminated there?

A. At that point, (indicating on a plat, Exhibit No. 5)?

16 Q. Yes, sir.

A. No, sir.

17 Q. Just describe briefly what appears there where the south end of the island, what is called Island 5, comes, by the survey. Describe the condition of the land.

A. Well, it seemed to be a little sloping there, slopes off this way, and also this way, and also that way (indicating).

18 Q. And the island commences at the highest point of the summit?

A. Yes, sir.

19 Q. State whether or not there is anything to indicate that any channel ever existed at that part of the island, at the south side of the island?

A. Not immediately there.

20 Q. Now, turning to the east, state whether or not there is any indication of any channel there.

A. Yes, sir.

20 Q. Which way does that channel run?

A. In the direction of the islands generally.

21 Q. Towards these parts that are marked on the plat?

A. At this point that is parallel to that line of the island as I ran it.

22 Q. Does that turn at any point and run up?

A. There is a low piece up there that might have come up there; it is filled in between there.

23 Q. You can't trace the old channel?

A. No, sir.

24 Q. But you found a depression north of these trees about how wide?

A. I should judge now it was sixty-six feet wide.

25 Q. And in such a direction that it might connect with the old channel as you found it there?

A. It might come around through there. On the right, to the southeast, as appears by this plat, I saw a willow tree, a little strip of willows there.

435 26 Q. Well, that is there (indicating). How old a tree is it?

A. I haven't any idea of it.

27 Q. How thick is it?

A. Probably two feet in diameter.

28 Q. Does it stand upon the natural surface of the island apparently?

A. Yes, sir.

29 Q. How far is it from the line of that island as marked there to any channel whatever or any indication of a channel?

A. About forty feet I should judge.

30 Q. How far is it on the south to the little narrow channel that is marked on the map?

A. About a hundred feet.

31 Q. How far is it from that narrow channel marked on the map to Fulton street in a straight line?

A. I don't know.

32 Q. How far is it from the south end of the island to Fulton street in a straight line?

A. I don't know; it would be about 800 feet in a due north line.

33 Q. That is as near as you can get to it?

A. Yes, that is not measured, simply estimated from the plat.

34 Q. It would be longer if it followed the course of the island?

A. Yes, sir.

35 Q. That is the shortest distance between Fulton street and the south side of the island, the due north line, is it not?

A. Yes, sir.

36 Q. What is the width of that little channel marked on the map as at the south side of the island. How wide is this little channel marked on the south side, apparently?

A. About twenty or thirty feet.

37 Q. There is nothing to indicate that it was ever wilder than than that, is there?

A. No, sir; not in here; there may be at the end of it.

38 Q. Now, state whether or not there is a channel across that island north of the furtherest tree as marked on that plat?

A. A channel?

436 39 Q. Yes.

A. Just right across there I don't know as there is any channel.

40 Q. State whether or not the appearance would indicate that there had been a channel some time.

A. I should judge that water went down there at some time.

41. The COURT: Is it your theory that the place you now speak of was the channel between this island in controversy and No. 3?

Mr. BUTTERFIELD: Yes, sir.

The COURT: That is supposed to be a map of No. 5. Then you must claim Island 5 took in a part of No. 3?

Mr. BUTTERFIELD: We will show by the minutes that it describes "coming north of Island 3 and turning down, leaving a willow isle to the left, with the channel 75 feet."

42 Q. Now, these are the minutes of section 25, aren't they (producing the same)?

A. Yes, sir.

43 Q. Please find for me the minutes of the west side of the river, coming down.

(Plaintiff's Exhibit A is shown witness.)

44 Q. Now, will you please read them?

A. (Reading:) "Minutes of Grand river. Beginning at base of island between section 24 and 25, right back down-stream, south 1,750, 1,180, in section 25, 1,321, Baptist mission."

45 Q. Point out to the court where those minutes commence on the plat, if you will.

A. It says, "N. 58, W. 293. Mission school-house S. 65¼, 4, 85, longest distance. From the corner between sections 24 and 25 south 1,750, west 1,180; in section 25 at 321, Baptist mission school-house bears north 58 yards, 293 links, thence to Mission school-house south five degrees, west 421 to a tree on head of Island No. 1 Grand Rapids; bears south 44½ east and south 3½; east 285; at 60 links Spring creek ten links wide to south line, east 509, small bush on head Island 2, bears south 529, tree head Island No. 1,

437 south 89, 13 east. Bush on head of do. No. 2 in N. 13¼. South 940 yards, 1,051, tree foot Island No. 1; N. 85¾ east.

"At 26 foot of Island No. 1 south 48½ east. Below head of Island 3 south 71 east. South 940 yards, 1,051. Tree foot of Island No. 1; north 85, 3½. At 261 foot of Island do. S. 48½ east. South line 40, west 1,051. Tree foot of Island No. 1, north 85¾ east. At 261 going south on the same course 1,051 is the whole distance. At 261 on that course, foot of Isle do. No. 1 south 48½ east. Same point at river's bank. Below head Island 3 south 71 east."

46 Q. Well, go ahead.

A. South 32½ west 590. Below head Island 3 N. 80 east.

47 Q. Now, what would that indicate in that survey from your experience as a surveyor?

A. That would indicate that there was a bush on the head of Island 3 which was located by these two different points.

48 Q. Now, have you examined to see where that bush would come?

A. No, sir; not on the ground.

49 Q. Do you know by diagram from the survey whether it would come south of Fulton street or not?

A. Yes, in the minutes of the river it would run south of Fulton street.

50 Q. Are you able to tell how much?

A. Not exactly; no, sir.

51 Q. About how much?

A. About 175 feet.

52 Q. South of Fulton street?

A. Yes, sir.

53 Q. That would be the bush?

A. Yes, sir.

54 Q. State whether in surveying surveyors take trees as monuments where they can get them, where they are proper monuments?

A. Yes, sir.

55 Q. They are proper monuments, are they not?

A. Yes, sir; surveyors are in the habit of taking them whereever they can find them if they are in their course.

438 56 Q. How far is Fulton street south of Bridge street in the city of Grand Rapids.

A. Half a mile by Government survey.

Objected to as immaterial, irrelevant and incompetent.

Cross-examination by Mr. CAMPBELL:

57 Q. When did you make the examination of these premises, Mr. Rumsey?

A. I made two examinations of them. I made the last one with Mr. Skeels, I think it was last Tuesday.

58 Q. And before that?

A. Before that it was last summer.

59 Q. Did you undertake to survey the land along the line of the island?

A. No. 5?

60 Q. Yes.

A. I endeavored to retrace Island No. 5 from the field-notes given.

61 Q. Have you those field-notes now in your possession?

A. No, sir.

62 Q. I call your attention to Defendant's Exhibit No. 1. The field-notes that you used in tracing Island No. 5. Examine those and see if those are the notes that you used?

A. I could tell by looking at it. This is not the identical copy.

63 Q. Read them over and see if they correspond in their courses?

A. I can't remember all the courses of the island.

64 Q. Haven't you any means of informing us what you used in tracing the line?

A. I used certified copies of the Government field-notes.

65 Q. Where are they?

A. I don't know.

66 Q. Well, your testimony would not be very valuable if you have nothing to certify to?

Objected to.

67 Q. Aren't you able to tell anything about where the field-notes are, Mr. Rumsey, about where you got them and what became of them?

A. Mr. Butterfield furnished me with these field-notes.

439 COUNSEL: Have you those field-notes, Mr. Butterfield?
Field-notes produced.

68 Q. Do you recognize those?

A. Yes, I recognize them.

69 Q. That is in manuscript instead of typewriting. Now, will you read over, Mr. Rumsey, the lines of Island 5 as you find them from the field-notes?

A. West 24 chains to left bank.

70 Q. Where did you begin?

A. At the quarter post east line of the township east side of section 25. West 24 chains to west bank of Grand river; west 402 degrees to east side of Island 2. North 8 degrees seven minutes east, 123 south, 40 degrees 29 minutes 159, south 40 degrees 29 min. west 1,971, south 34 deg., west 580; south 60 links 115 min., east 125, north 37 deg. 30 min., east 673, north 1,115, east 141, bears 2 deg. 20 links east.

71 Q. Did you make any map of that retracing?

A. No, sir.

72 Q. Let me show you this one, Defendant's Exhibit 5. In the first place, in the general way, state what you did by way of running the lines there and finding them?

A. I started from the west line of Waterloo street. I had measured that before from the quarter post.

73 Q. Where is the quarter post?

A. On division street about the center of Fulton street.

74 Q. Well, you had run that line before?

A. Yes, sir.

75 Q. Thence west, commencing at this quarter post, west 24. That is 24 chains?

A. Yes, sir.

76 Q. Will you give right here the length of a chain?

A. Sixty-six feet.

77 Q. No fraction?

A. No, sir.

78 Q. Where does that west 24 chains bring you?

A. The west 24?

79 Q. Measured from Division to Fulton street and running west 24?

A. I made no note of that.

440 80 Q. You measured it before?

A. No; I had measured from the quarter post to the west line of Waterloo street where there was an iron stake, and then I added the two together; I don't remember just what it is, but it is fifteen hundred and some feet.

81 Q. From Division street to Waterloo street?

A. Yes, sir.

82 Q. You had that distance?

A. And then I added the balance to make up the 24 chains, and the extra four chains across the channel; so I had the whole distance to the point.

83 Q. Now, these two measurements, that is how you got at them, noting the distance from Division to Waterloo street, and then you added the others?

A. Yes, sir.

84 Q. Where would that bring you? I see here "bank of Grand river west 42 deg., established by triangulation to the east side of Island No. 2." Where was that point; where would that bring you with reference to the west line of Fulton street?

A. To the east side of Island No. 2.

85 Q. Now, following this line here, you would strike the higher side of the bank; now, the next course is north 8 deg. and 20 min. east?

A. Yes, sir.

86 Q. That would take you which way from the center line of Fulton street?

A. Northwest.

87 Q. And that 1—25, what is that?

A. That is one chain, 25 links from the center line.

88 Q. South 40 deg., 27 min., west 159; which way would that take you?

A. Take you back on Fulton street, that is about the center line of Fulton street again, going back.

89 Q. On the east side of the point of the island?

A. Yes, sir.

90 Q. And this south 40 deg., 29 min., west 3-97; where
441 would that take you to, about; this is, down the bank; isn't it down the east bank of the island?

A. No, sir; that is down the other bank, down the west

91 Q. You reach a certain point indicated by that 24 chains, or 4 chains, or 2 chains?

A. Yes, sir.

92 Q. Then you go north 8 deg. and 30 min. east; now, the next course is north 8 deg. and 30 deg. east?

A. Yes, that is right.

93 Q. That would run northwest?

A. No, sir; that would run northeast.

94 Q. What line of the island is that supposed to be; that first

course that you run east on; I see a measurement which you have of 28 chains, and a fraction brings you to the east side of the island?

A. Yes, sir.

95 Q. Then do you run from that northeast; that would be away from the island?

A. Yes, that would be away from the island.

96 Q. Now, run this one chain and 23—is it 23 links?

A. Yes, sir.

97 Q. You run northeast away from the island 23 links and one chain?

A. Yes, sir.

98 Q. The next course is south 40 deg. and 29 min. west; that would be southwest?

A. Yes, sir.

99 Q. Where would that bring you to?

A. Onto the bridge.

100 Q. That is south 40 deg., 29 min. west——

A. That is when we are running away from the island, but the island does not run north and south. That is where that comes. The island runs at an angle.

101 Q. That is really northeast, and still on the easterly bank of the island?

A. Yes, sir.

102 Q. Commencing at Fulton street it follows to the west, going north all around, and coming around here?

A. Yes, sir; all around the island.

103 Q. That first comes north, and 8 deg. east; does that
442 bring you to what is supposed to be the point of the island?

A. Yes, sir; that still brings you nearer the west end of the island than the east, for the reason that the island does not lie north and south.

104 Q. Now, take this second course; I will read from this; now the second course is south 40 deg. 29 min. west, one chain, 59 links; on which side of the island would that be?

A. On the east side.

105 Q. Going to the west?

A. About the center of Fulton street.

106 Q. Now, this next course south 40 deg. 29 min. west, three chains and 97 links?

A. Still bearing west and going south.

107 Q. South 34 links, west 5 chains and 50 links?

A. Still in the same general direction.

108 Q. East side of the island?

A. Yes, sir.

109 Q. Then south 6 deg. 45 min., east 2 chains 87 links?

A. On the south side of the island—or no, when you get to the end of it, it would be.

110 Q. Turning a little to the east, the bank of the river turned in that way?

A. Yes, sir.

111 Q. From that last course you go east one chain 25 links; that is a southerly line of the island?

A. Yes, sir.

112 Q. Then north 33 degrees, 30 min. east, 6 chains 73 links; thence north 11 deg. 15 min. east, one chain 7 links; that is going northeast along this easterly side of the island?

A. Yes, sir.

113 Q. Thence 8 deg. north, 7 chains, 35 links east?

A. That is following the course that would be around the island.

114 Q. In your examination of the island did you follow these courses?

A. The first course would commence from a quarter post which is on Division street; I interpreted the next to mean on the quarter line which is the center of Fulton street.

443 115 Q. Having arrived at the east bank, what is called the east bank, you arrive at a point which according to this survey would be the east bank of the island?

A. Yes, sir.

116 Q. And near what point was that? In the direction in which the surveyor went?

A. No, sir; it went the other way.

117 Q. Took the other course?

A. Yes; for the reason that on account of starting in going around that so much interferes with Fulton-street bridge, and I started and went around the other way, and came back upon the west side.

118 Q. I want to call your attention to some marks that are there; of course Fulton street is well marked; there is a high bank there, isn't there?

A. Yes, sir.

119 Q. Twenty feet higher than the surface below?

A. Yes, sir.

120 Q. Looking south from Fulton street, and along the west bank of the river running south from Fulton, you are looking on a piece of land covered with growing turf and grass, and you look clear down below those three big trees standing there?

A. Well, there is filling before you get that far.

121 Q. Well, that in any part doesn't go to the river?

A. I am speaking of the bank along the east side.

122 Q. This high filling?

A. Up above Fulton-street bridge.

123 Q. Up above Fulton-street bridge it goes to the river? South on Fulton street?

A. No, above Fulton street.

124 Q. No, I am speaking of south of that; take from Fulton street south?

A. I don't think it goes to the river.

125 Q. There was some filling there you say?

A. Yes, sir.

126 Q. A high bank?

A. Yes, sir.

127 Q. Do you know where Mr. Butler lives?

A. Yes, sir.

444 128 Q. Did you find any other trace of filling anywhere else, artificial filling I mean?

A. There is one filling there.

129 Q. Where is that?

A. There is a filling there, you look down onto the ground,—I mean back of Mr. Butler's, a great big long bank that runs almost to the water's edge?

A. Yes, sir.

130 Q. Now, next to these two is there any other filling which you now remember, excepting these two?

A. I don't remember any.

131 Q. Looking down the east bank of the river from Fulton-street bridge down it is grassy, isn't it, dry ground, isn't it now?

A. Yes, sir.

132 Q. Above the river the turf is growing?

A. Yes, sir.

133 Q. That extends down to these big trees excepting where corn is planted?

A. No, sir; that doesn't extend as far as the trees, quite; the filling is north of the trees.

134 Q. Well, generally speaking I mean; there is turf around where the trees stand?

A. Yes, sir.

135 Q. And turf north of this filling, where this filling is?

A. Yes, sir.

136 Q. In running these lines did you go north or south of these three trees?

A. I went north of those two trees.

137 Q. And south of the tree that stands furtherest north?

A. Yes, sir.

138 Q. Then the low depression that you spoke of that looks as that a channel might have run in there, that is where corn is planted?

A. Yes, sir.

139 Q. Runs from east to west and is a little lower?

A. Yes, considerably lower.

140 Q. That is because of this big high filling, isn't it?

A. Yes, sir.

141 Q. This big high bank?

A. Yes, sir.

142 Q. Next to that and south of this there is a little
445 bit of a bank, a kind of a roadway, did you notice that?

A. South of that large filling?

142½ Q. Yes, south of this depression, south of the large filling.

A. How far is that?

143 Q. I should judge thirty feet maybe, thirty or forty feet. There is a place there in which there are stumps and cornstalks cut off?

A. Yes, sir.

144 Q. Well, this place is along south of that. A kind of a roadway, did you notice that?

A. No, sir.

145 Q. You spoke in your direct examination of this place which you took to be a channel. Do you refer to this place that the cornstalks were growing in? This depression that you now speak of?

A. I referred then to the channel that I saw along there.

146 Q. You mean the east channel?

A. What I mean was the channel which is shown in Exhibit 5 there as being to the left of the island.

147 Q. And passed through this place where you speak of the stubble?

A. Yes, sir.

148 Q. Did you discover traces of the old channel east of the island?

A. There is a channel there, if it may be called a channel.

149 Q. Let me call your attention to the place north of this high filling and below Fulton street where there are large willows growing?

A. Yes, sir.

150 Q. Do you remember that?

A. Yes, sir.

151 Q. Hasn't that the appearance of an old channel?

A. Yes, sir.

152 Q. And then at the high filling isn't there another depression there east of the tree?

A. Yes, sir.

153 Q. That is what you think the channel was?

A. Yes, I think that was the channel.

154 Q. And going still further south and across the road-
446 way, and this Island 2 from Oakes street you strike the water in the steamboat slip. Did you go over there?

A. Yes, sir; I surveyed there.

155 Q. Do you remember the high roadway that is built onto the big island?

A. Yes, sir.

156 Q. Now, I want to call your attention to a place south of these trees where there is a deep inlet into the east bank of the river; do you remember that?

A. Filled with water?

156½ Q. Yes. There is a roadway passing from the main land. Do you remember that?

A. You mean a roadway that comes from Waterloo street onto the island.

157 Q. No, I am speaking of the roadway running along there dividing that inlet. Do you remember that?

A. I don't remember to what you refer.

158 Q. South of the trees and north of the high land. North of that road from Oakes street produced?

A. Yes, sir.

159 Q. Do you remember that inlet there?

A. Yes, sir.

160 Q. That roadway through it going north?

A. Yes, sir.

161 Q. Towards the west part of the island?

A. Yes, sir.

162 Q. The road, I think, runs north and south. Perhaps it runs in the general direction of the river now. Did you notice the course of it?

A. No, sir.

163 Q. Now, did you notice to the northeast of the island below the inlet a long, low sand bar covered with willows?

A. Yes, sir.

164 Q. Very narrow and very long?

A. Whether it is there now?

165 Q. Yes, I speak of the present examination. If you went in running these courses south of the first tree, that is the tree furtherest north, you were south of this depression in this corn-field?

A. Yes, south of the two trees.

447 166 Q. And of course south of the depression?

A. Yes, sir.

167 Q. Where the corn is?

A. Yes, sir.

168 Q. By saying, Mr. Rumsey, in your statement that there is no island there now, what do you mean by that. You don't mean that the surface of the land that was an island disappeared, do you?

A. I don't know as I made that statement.

169 Q. I understood you to mean that the channel is filled in east of it so that as the land appears there now the island is not outlined as it might have been once. Island 5?

A. That is not outlined now. There is no demarkation there on the east side.

170 Q. Except this depression?

A. Yes; of course, except this depression.

171 Q. Did you take any lengths while making the surveys of the island from those trees to Fulton street?

A. No, sir.

Redirect examination by Mr. BUTTERFIELD:

172 Q. What is this little stream he has been asking you about state whether or not it is indicated on that map; he talked about a little narrow creek that ran from the main river; is that the same one that is marked on the map south of the island here?

A. Yes sir.

173 Q. Marked by two lines, extending towards the right-hand corner of the map?

A. Yes, sir.

174 Q. Now, what is the character of the surface from the north side of the little inlet to the mark which is made on the south side of the island, as surveyed?

A. It slopes gradually from the mark to the inlet.

175 Q. I will ask you, in the condition the ground is there, if there is anything to indicate that there was ever any islands there?
A. To indicate that now?
176 Q. Yes; taking the thing as it looks now?
448 A. Oh, no; I didn't know anything about that; I wouldn't swear there ever was an island there, for I didn't see it at that time.
177 Q. In other words, the present surface would not indicate any island there at all; just like an ordinary sheer bank.

Objected to as leading.

A. There is not much to indicate that there was an island there.
178 Q. For how long a distance is there anything like a channel through there on the east side of what you call Island 5; how long is that channel?
A. On the east side?
179 Q. Yes.
A. That is in sections; there is one section near Fulton-street bridge.
180 Q. How long was all that section that appeared there that would indicate that there was a channel there; give us the length as near as you can?
A. I couldn't tell very well; they have been filled in.
181 Q. I mean south, in that part; just south, as you would see them going onto the island?
A. I should judge the lower one would not exceed a hundred feet.
182 Q. And the upper one, how many feet is that?
A. Probably nearly 200 feet.
183 Q. The upper one, where these willows are?
A. Yes, sir.
184 Q. State whether or not the land lying south of this, that is marked here as an island, the south side of Island 5, keeps up its general level down to the north side of the little channel, or about?
A. I don't think it does.
185 Q. How rapidly does it slope; where does the slope commence; how far does it keep up its level before the south side?
A. I said before that it sloped from a line.
186 Q. What line?
A. I think it is the highest point there.
449 187 Q. How high is that point above the present stage of the water?
A. Three or four feet.

Recross-examination by Mr. CAMPBELL:

188 Q. I want to ask, how long have you lived in Grand Rapids; has this been your home?
A. I live here.
189 Q. You are a son of James A. Rumsey?
A. Yes, sir.

190 Q. Did you grow up here?
A. Yes, sir.
191 Q. How old are you now?
A. Nearly forty.
192 Q. And a good share of that time you have been away from Grand Rapids?
A. Yes; I have been away from here nine years.
193 Q. Did you ever see this island down here before the channel was filled up, Island 5?
A. I suppose I have seen it.
194 Q. Did you ever go there or have your attention called to it in early years?
A. Not particularly.
195 Q. Did you ever go around those islands as a boy hunting and fishing and swimming?
A. Yes, sir.
196 Q. Do you remember this island?

Objected to as not cross-examination.

A. Not particularly this island; I never knew it was No. 5.
197 Q. In making this survey you depended on what you found on the paper, as I understood you; you had no personal knowledge of your own?
A. No, sir.
198 Q. Just went by the papers, what you found by them?
A. Yes, sir.

HERMAN VAN ALDEREN, sworn on the rebuttal.

Examined by Mr. BUTTERFIELD:

1 Q. You are the deputy register of deeds of Kent county?
A. Yes, sir.
2 Q. Have you in your possession Liber 183 of Deeds?
A. Yes, sir.
450 3 Q. Turn to page one, if you please.
A. Here it is.
4 Q. What do you find there?
A. I find here patent from the United States of America to State of Michigan for the use and benefit of the Grand Rapids & Indiana Company.
5 Q. What is the date?
A. March 28th, 1871.
6 Q. What is the date of the recording of the instrument?
A. August 9th, 1887.
7 Q. Read what it says concerning selections there.

Objected to.
Said patent was read in evidence.

8 Q. Do you find any description covering lines there; just read how this island is described?

A. "Township 7, range 12, Island No. 5 in Grand river, in section 25, containing two acres and fifty-six hundredths acres."

9 Q. Is there any other land in that township?

A. I guess not.

10 Q. Have you the Government tract book in your possession?

A. Yes, sir.

11 Q. Please turn to the entries in regard to Island- One, Two, Three and Four, in Grand river.

A. Well, yes, there is islands in Grand river, No. 1 and 2, opposite section 25, entered by Louis Campau, patent issued to Louis Campau August 10th, 1841.

12 Q. And the contents of the islands?

A. 3.49 acres.

13 Q. No. 3 do you find there?

A. Island in Grand river No. 3, nine acres and one one-hundredths, to Richard Godfroy.

14 Q. When was it entered?

A. August 3, 1839, and patent issued on same August 10th, 1841.

15 Q. Island No. 4, do you find that there?

A. Island No. 4, Grand river, section 28, 7, 12, 2.10 acres was purchased by L. B. Russell, August 13th, 1839, patent issued to him August 25th, 1841.

451 Mr. BUTTERFIELD: I offer in evidence the entries covering Islands One, Two, Three and Four in Grand river.

Objected to as immaterial.

Cross-examination by Mr. CAMPBELL:

16 Q. Please turn back to those entries of No. 1 and 2. How were they located with reference to sections, and what sections are they in?

A. In section 25.

17 Q. Both number- 1 and 2?

A. Yes, sir.

18 Q. How many acres in No. 1 and 2?

A. 3 and $\frac{49}{100}$.

19 Q. And they would be in the north half of the section?

A. Yes, sir.

20 Q. How many acres in No. 3?

A. 9 and $\frac{1}{100}$.

21 Q. Please turn and show to whom the north half of section 25 was sold, if you can there. How many acres were there in the island, or have you stated?

A. 3 acres and $\frac{49}{100}$.

22 Q. Both islands?

A. Yes, sir.

23 Q. Island- No. 1 and 2 composed the north half of the section?

A. They are in section 25.

24 Q. By whom was the north half of that section entered, the north half of section 25?

Objected to as immaterial.

25 Q. That is the northeast fractional quarter and northwest fractional?

A. The east fraction of the northeast quarter of section 25 was entered by Louis Campau.

26 Q. What date?

A. September 19th, 1831.

27 Q. Was it patented?

A. No, sir; no patent issued.

28 Q. Just the entry?

A. Yes, sir.

29 Q. What section is Island No. 3 in there?

A. That would be in the same section, 25.

30 Q. That would be in the south half, wouldn't it?

A. Yes, sir.

31 Q. And that you have stated was patented by Richard Godfroy?

A. Yes, sir.

452 32 Q. To whom was the southeast fractional quarter of section 25 sold?

A. The north fractional of the southeast quarter was entered by Lucius Lyon and Mr. Hastings.

33 Q. By whom was the south half entered?

A. Henry L. Ellsworth.

34 Q. What date?

A. September 25th, 1832.

35 Q. Was it patented?

A. No, sir.

36 Q. When was this entry made by Lyon and Hastings?

Objected to as incompetent.

A. The same date, September 25th, 1832.

37 Q. Both made on the same date?

A. Yes, sir.

38 Q. Island 3 was entered in August, 1839?

A. Yes, sir.

39 Q. Is there any entry there as to Island 5, as to the location of it? Did it go on as railroad lands or was it entered?

A. It was not entered.

40 Q. You have no entry of Island 5, section 25?

A. No, sir.

41 Q. If there was no entry it would not appear there?

A. If there was an entry I presume it would appear.

42 Q. I say if there was no entry there would be no appearance of it there on the tract book?

A. No, sir.

JOSEPH PENNEY, sworn in defense.

Examined by Mr. CAMPBELL:

1 Q. How long have you lived in Grand Rapids?

A. 20 years the last time. I was away from here during the war.

2 Q. When did you first come to Grand Rapids?
A. My father brought me here as a boy in 1847, I think.
3 Q. What is your father's name?
A. Rev. Joseph Penney.
4 Q. Is he now alive?
A. He died in 1860.

453 5 Q. I show this map—(producing the same)—which was identified here this morning; a map of the city of Grand Rapids, with a written memorandum there, showing its presentation to the Rev. J. Penney, with the respects of W. A. Richmond, of Grand Rapids, Michigan, November 11, 1842. I will ask you if you ever saw that before?
A. Yes; I know that very well.
6 Q. When did you first see it?
A. I think some time in 1860; my father died in 1860, in March, March 22nd, 1860, and his papers and other matters came into my hands soon after that, and this was among them. I found that among his papers.

(Said map is offered in evidence.)

Cross-examination by Mr. BUTTERFIELD:

7 Q. All you know about this paper, Colonel, is that among your father's papers you found this, and have kept it ever since as a curiosity?
A. Yes, sir.
8 Q. That is all there is to it?
A. So far as I know, that is all.

(Said map is objected to as immaterial and incompetent, as not being authenticated in any way, or the correctness shown.)

Mr. CAMPBELL:

9 Q. Did you know John Almy?
A. Yes; I recall him during my earlier life.
10 Q. What was his business?

Objected to as incompetent.

A. He was a civil engineer.
11 Q. Well, he was an old resident here?
A. Yes; he came very early.

JOHN T. HOLMES, sworn in rebuttal.

Examined by Mr. BUTTERFIELD:

1 Q. How long have you resided in the city of Grand Rapids?
A. I have resided here, sir, continuously since 52 years ago last February.

454 2 Q. Were you here before that?
A. Yes; I was here in the December before.
3 Q. Do you know the premises called Island No. 3?
A. Yes, sir.

4 Q. You have been interested in them for how long?

A. Since the 4th day of June, 1855.

5 Q. Were you familiar with them before that time?

A. I knew them generally before that time; some little time before that I made some examination before I purchased them.

6 Q. You have been there lately, have you not?

A. Yesterday and today.

7 Q. I call your attention to a little channel that extends in from the main river about opposite where Oakes street is now, and beyond the causeway that is used to cross onto this land?

A. You mean the sluiceway that was to carry water from one stream to the other?

8 Q. Well, where is that sluiceway?

A. Very near where the water used to sometimes pass over from one of these streams to the other.

9 Q. Do you know where there are three large trees there? There are some barns and stuff on there, aren't there?

A. Yes, sir.

10 Q. The trees that are furtherest north, as they at present stand, between there and Fulton street, where is this channel with respect to those trees?

A. I hardly know, Mr. Butterfield, what you mean by the word "channel."

11 Q. South of the tree, south of those three trees there is an object, a little bit of a, what you would call in river terms, *a* towhead, a small island, and there is an indentation that runs into the island and through that water goes in towards the center of the island.

A. Oh, I see.

12 Q. And a roadway crosses it.

A. I see.

13 Q. That forms a little path marked on Exhibit 5, run-
455 ning towards the right. Here are the three trees. I will call your attention to that little place in there about twenty feet wide. Do you know how that is formed there, and when, Judge?

A. I am not prepared to say, Mr. Butterfield. I can state to you all I do know about it.

14 Q. Well, state what you do know about it please.

A. The first I ever saw a thing of that kind was after I became interested in the islands.

15 Q. Yes?

A. And after there had been a very high freshet in the spring in which a large tree was torn down from somewhere up the river and lodged in what we call the West river, west of the island, that remained there for some years, and when the water went down after that same spring I discovered this little formation like a little brook, but it disappeared as the water went down.

16 Q. Yes. Well, go on.

A. I can simply say I remember the fact that during some years after that whenever we had high water that same thing would be

repeated, then when the water went down there was the little brook that the water would pass through from one channel to the other.

17 Q. Through this place?

A. Yes, sir, and then after the tree disappeared—it was cut up by somebody for wood, I think—I don't remember about that, and after it disappeared, I don't remember anything about that, except there was the mark there still.

Cross-examination by Mr. CAMPBELL:

18 Q. Where is this place you are speaking of now?

A. If I was there I could point it out to you without any difficulty, but I don't think that I can express myself so as to give a definite idea of it.

19 Q. I know every inch of that place up and down from Fulton street south.

A. Well, you know where the sluiceway is that the city put in there. Now, this place I speak of was located in that vicinity,
456 the vicinity of where this sluice was, if that is a proper term, that was built by the city.

20 Q. Isn't there a long inlet in there in the east bank of the river below Fulton street right at the head of a little willow strip?

A. Well, it is there today. A long narrow strip covered with willows and wood and one thing and another lying off to the east; I think the line of Oakes street would strike it.

21 Q. Do you remember that?

A. Yes, I should say generally that I do.

22 Q. Well, right there near the head of the island is a little indentation in there near the east bank of the river, isn't there?

A. If I understand you correctly there was always a place about there that there was a drop off of the ground, that is to say where the ground commenced to be lower.

23 Q. It is there today; now you passed by the north and south roadway; do you remember where that is, near the east end of the bank?

A. Oh, yes.

24 Q. Is that the place you speak of?

A. Well, it is near that; I wouldn't locate it exactly where the roadway is.

25 Q. Which roadway do you mean?

A. I mean the roadway going from the mainland to the island.

26 Q. No, I am speaking of the roadway in on the west of the old channel.

A. Well, I don't remember anything in particular in that locality; that is north of Oakes street, north of what Oakes street would be produced from where it now terminates to across the island.

27 Q. Going in below that line, go right in to the east bank, and then turn north and go north a little way and you will strike another roadway; do you remember that one, a north and south road running from the channel?

A. I don't remember of any being there now; the whole face of

the country has been changed so much by the taking up, the digging up of the main channel.

457 28 Q. Which do you call the main channel?

A. The east one.

29 Q. The old steamboat channel?

A. Yes, sir.

30 Q. How recently have you been on the premises?

A. I was down there in the past week, but I didn't pay any particular attention.

31 Q. You are still one of the owners of land there, aren't you?

A. I still own an interest in it.

32 Q. And it is known as Holmes island; it takes its name from you?

A. I didn't know as it was known by that name.

33 Q. Well, we call it so in this trial?

A. In the early days it was known as Godfroy island, and while Miller was living he rather took the honor of the ownership, and it was called Miller island.

34 Q. How early did you come here, Judge?

A. I first saw Grand Rapids in 1837.

35 Q. How long did you stay here then?

A. About a week, in and about here.

36 Q. When did you come back here to live?

A. February 14th, 1838.

37 Q. When did you acquire an interest in this Island 3?

A. On the 4th day of June, 1855.

38 Q. You have held it ever since?

A. Yes, sir.

39 Q. Did you ever have it surveyed, or anything done to the place?

A. Not for the purpose of having it accurately surveyed; on one occasion when there were some surveyors making a survey of the channel for logging purposes, they had a little idle time; they were at Grand Haven, and I had a little curiosity to know about how much land there was, and had them run around it, but not with the idea of locating lots, or anything of that sort.

40 Q. Are you familiar with the island that lay north of this, running up to Fulton street?

A. Yes, the two islands, 1 and 2.

458 41 Q. Do you remember the island that ran from this one along up to Fulton street?

A. From this island to Fulton street?

42 Q. Yes.

A. This Island No. 3, as we always claim, it ran up to Fulton street, or about there.

43 Q. During all the time since you first knew it?

A. Yes, I should say so.

44 Q. About where was the north end?

A. I remember well about that in reference to the ferry in there; I remember where that was.

45 Q. How near did it run to the ferry line in ordinary stages?

A. Well, then it ran up pretty near. Of course Fulton-street bridge was not located then, but I should say it ran up, my recollection would be, about where Fulton-street bridge is.

46 Q. What was the character of the land below Fulton street?

A. Low and in some places a little irregular, that is to say, while low there would be some places lower than others. The surface was the same smoothness as it was at the higher portion.

47 Q. How was it at the north end? Was there anything growing there in the shape of willows or soft maples?

A. There was some willows there, and there were some trees a little further down than that and a little further up than the present trees are now standing.

48 Q. A little bit further up the stream?

A. Yes, sir.

49 Q. Now, commencing at the north end of it, at or near Fulton street, how was it?

A. Well, going to the north end I couldn't speak with any certainty, as to the growth, but after going a little west you encountered a large tree there.

50 Q. When did you first go onto the island?

A. I couldn't tell you.

51 Q. In early years?

A. In '38, '39 or '40.

459 52 Q. When you first came here?

A. Yes, I was on the island, you might say every spring.

53 Q. You have known it more or less familiarly ever since?

A. Yes, I remember generally the location of the island, after my first visit here in December, 1837.

54 Q. When you first saw it in 1838 and '39 was there hard land from what you call the head of the island about Fulton street down to the lower end of the island in ordinary stages of the water. Was it what you call an island, or hard land from the northern point?

A. It was what we would call an island.

55 Q. Turf growing over part of it?

A. I think so.

56 Q. Near the north end?

A. Well, there was an exception of what looked like alluvial soil, what you would term perhaps strictly a hard soil, extending off into the water, and in very low water standing there with that character of soil together with the character of soil that forms on the lower end of Island No. 2 would almost shut the island off from the two channels.

57 Q. That made some periods when there was hardly any passage there at all, these two little points, one below the other would almost meet?

A. Yes, sir.

58 Q. But there was the channel between the islands?

A. Yes, what we always called a navigable channel in those days.

59 Q. What I want to know is whether commencing at the north-

erly part as you fix it and going away down there, in the early days it was an island, when you first knew it?

A. We always called it one island.

60 Q. And it was covered more or less with timber and turf?

A. Yes, sir.

61 Q. Now, I understand, you claim that that Island No. 3 goes away up to Fulton street?

A. That is my claim, that they go together from the lowest
461 point down the river to the highest point up the river, which would bring it from the lowest point up to Fulton-street bridge.

62 Q. I am asking as to your personal knowledge as to the extent of that island there, running back from Fulton street, south from Fulton street, along back of Waterloo street, there below Fulton street, if there has been an island clear down there so long as you have known the river?

A. I so understood it, sir.

Redirect examination by Mr. BUTTERFIELD:

63 Q. North of these trees, being the north tree, the large tree, which you have spoken of, state whether or not the water ran over that?

A. You want to know if water ran over there in some places?

64 Q. Wasn't it so much lower than the main surface that water would be running over there and form a distinct channel and leave a little island north of it?

A. Well, there would, if I understand what you refer to. Along there there was a lower place in the middle than it was above.

65 Q. Don't you know, Mr. Holmes, that the notes of the survey, the minutes and notes of Island 3, will not reach up to Fulton street?

A. I can hardly say I know that.

66 Q. Hav'n't you heard that?

A. I think I have heard that said.

67 Q. Don't you know it is a fact?

A. I hav'n't examined the notes, or any exhibit, or paper, I hav'n't observed any paper or anything.

Testimony closed.

460 STATE OF MICHIGAN:

The Circuit Court for the County of Kent. In Chancery.

JOHN BUTLER, Complainant,
vs.
THE GRAND RAPIDS & INDIANA RAILROAD COMPANY, Continental Improvement Company, William H. Barnes, and Philadelphia Trust, Safe Deposit and Insurance Company, Defendants.

It is hereby stipulated that Ebenezer W. Barnes, who resides at the city of Grand Rapids, in the county of Kent, State of Michigan,

may be examined as a witness on the part of the complainant in this cause before Mary B. Campbell, a notary public in and for Kent county, State of Michigan, at the law offices of Thomas J. O'Brien, in the new Aldrich block, so called, in the city of Grand Rapids, county of Kent, State of Michigan, on the 11th day of July, A. D. 1889, at two o'clock in the afternoon of said day. Such deposition may in the first instance be taken stenographically and then be transcribed by said notary, and it may be read on the hearing of said cause in the same manner and with like effect as if taken before the proper circuit court commissioner or as if the said witness were duly sworn in open court at the hearing of this cause. This deposition is so taken at the present time for the reason that the said main witness is not about to depart from said county of Kent.

Dated Grand Rapids, July 8, 1889.

BUTTERFIELD & KEENEY,
Sol'rs for Compl't.
T. J. O'BRIEN, *Sol'r for Defendant-.*

Deposition of Ebenezer W. Barnes, for Complainant.

The said EBENEZER W. BARNES being duly sworn and examined as a witness for and on behalf of the said complainant, deposeth as follows:

462 Examined by Mr. KEENEY:

Q. Capt. Barnes, you live at the city of Grand Rapids, do you not?

A. I do at present.

Q. How long have you lived here?

A. My last stay, I came here in 1866.

Q. What is your age at the present time?

A. Seventy years.

Q. When did you first come to Grand Rapids?

A. Came here in the fall of 1836.

Q. Where were you employed at that time?

A. Well, the next spring I was employed in a store down on the river bank, down near the Barnard house, the next spring after I came here.

Q. What store was that?

A. A man by the name of Watson was the proprietor.

Q. How long did you remain at the Watson store?

A. I am not positive about that; somewhere from two to three years; not positive about that.

Q. After that where did you go?

A. I went to Grand Ha ven after that.

Q. Did you know the warehouse formerly known as the Richard Godfroy warehouse at this place?

A. Yes, sir; I frequently used to go there.

Q. Where was this Richard Godfroy warehouse situated?

A. Well, my recollection now is that it was just a little south of

Fulton street; if I remember right, not far from the corner of Fulton street, right on the bank of the river.

Q. Right by Fulton street?

A. I think it was; I am not positive about the exact location; some two or three buildings below this Watson warehouse and store.

Q. You mean the Watson warehouse and store where you were employed?

A. Yes, sir.

Q. Might not this Richard Godfroy warehouse have been just north of the line where Fulton street now is?

463 A. It is possible that it might have been, but my understanding is that it was south of it; I am not positive about that.

Q. Do you recollect the ferry which at that time crossed the river at that place?

A. Yes, sir.

Q. Where was the eastern terminus of this ferry?

A. I think it terminated right at the end of Fulton street; that is my recollection now.

Q. Do you remember Island No. 3, as it is called, in Grand river?

A. Well, I have a faint recollection of it.

Q. The island that is opposite the old boat landing?

A. I have a faint recollection of it.

Q. State whether when you first came here there was any island lying in the river between this ferry and Island No. 3?

A. I don't remember of any island or any land appearing there; don't recollect of any.

Q. What was the character of the river between the ferry and Island No. 3, if you recollect?

A. Well I noticed a pretty good deal of sand, and in crossing the ferry the ferry-boat used occasionlly to get onto the sand, but not to hinder it in particular; I should think it was all sand below that.

Q. Have you ever known the steamboat on the river to get onto the sand at this point in the stream?

A. The steamboat Governor Mason got aground one time in particular that I recollect of, I don't know as I can call to mind any other particular time.

Q. What was that circumstance, how do you recollect?

A. That started from the dock to go down the river, soon after they left the dock they run onto a sand bar and then there was quite a good many people on the shore looking at it; there was a proposition made that they pull off their coats and go down and shove her off, and they jumped in. Quite a good many of them, the water was very shallow.

Q. It was water where they jumped in to shove the boat off?

A. Yes, sir.

464 Q. About how far below the ferry was this?

A. Only a short distance, probably eight or ten rods, only a short distance.

Q. This was between the ferry then and the lower boat landing, down the stream?

A. Yes, sir.

Q. There was at that time a boat landing down the stream in the vicinity of the present steamboat landing, was there not?

A. Not at that time but afterwards.

Q. Afterwards?

A. Yes, sir.

Q. That is the landing of which you just spoke as the lower landing?

A. No, I haven't referred to the lower landing at all yet. It was a landing up at the Watson warehouse where this boat left, when it got aground.

Q. The boat left the landing at Watson warehouse?

A. Yes.

Q. And this was then further down the stream and some eight or ten rods as you recollect it, below where the ferry crossed?

A. Yes, that is about the way I remember it.

Q. Since the year 1866 when you returned last from the Haven, what has been your occupation here?

A. It has been in the warehouse until about three years ago.

Q. What warehouse do you refer to by that, Captain?

A. Ganoe & Son's river-boat warehouse.

Q. You have then during those years been connected with the transportation of freight up and down the Grand river?

A. Yes, sir.

On cross-examination by Mr. O'BRIEN, the witness testified as follows:

Q. Do you remember where the head of Island No. 3 then was?

A. My recollection—that is the one opposite the old boat landing, the present landing, that is the island called No. 3—my recollection was that it was pretty near where that road was that goes over onto the island down this side of the boat landing.

465 Q. The road that has been made there at the north end of the canal?

A. Yes, sir, that is the road I have reference to.

Q. Don't you remember that there was an island between the head of the Island No. 3 and Fulton street?

A. I have no recollection of any island appearing there now.

Q. Between these two points?

A. I do not.

Q. How long did you say you were there at that time?

A. Two or three years, I don't recollect exactly.

Q. Did the ferry that crossed the river go directly from what is now Fulton-street bank, the bank at Fulton street, did it go directly across?

A. My impression is that it bore a little to the south, the landing is a little farther south on the west bank.

Q. In starting from the Watson warehouse to go across the river, did they go straight across or did they go down-stream a piece?

A. They had to go down a little to strike the ferry and then cross over on the ferry.

Q. No, I mean the ferry-boat, where did that start from on this side?

A. About Fulton street, is my recollection.

Q. That is where the Watson warehouse was?

A. No, the Watson warehouse was a little farther upstream.

Q. When the ferry-boats started from the foot of Fulton street, didn't they go down-stream a piece in the channel before turning west?

A. Well, it usually went out into the stream some little ways and then kind of bore downs-tream a little till it landed on the west side, so that it landed some little distance below where it started from.

Q. Have you looked at that location lately, Captain?

A. Well, not particularly.

Q. When did you look at it last with reference to the facts you are now giving us?

A. I don't know that I have at all.

EBENEZER W. BARNS.

Read over to said witness by me and by him subscribed in my presence this 11th day of July, 1889.

MARY B. CAMPBELL,
Notary Public in and for Kent County, Michigan.

466 *Documentary Evidence.*

The documentary evidence introduced on the trial is hereunto appended. The same for convenience is classified and arranged in chapters. The numbers and contents of said chapters are as follows:

Chapter I.

Certified copy of field-notes from the office of the commissioner of the State land office of the State of Michigan. Complainant's Exhibit A. Transcript page 166.

Chapter II.

Records and entries in the office of the register of deeds of the county of Kent introduced by complainant, to prove his title to the lands in controversy. Transcript pages 104 to 117.

Chapter III.

Record of patent from the United States to the Grand Rapids and Indiana Railroad Company, recorded in Liber 183, page 1. introduced by complainant. Transcript page 419.

Chapter IV.

Entries in tract book in office of register of deeds, Kent county, relating to islands numbered one, two, three and four, in Grand

river, and to certain parts of section twenty-five, township seven, twelve west. (Entries as to islands introduced by complainant. Other entries called out on cross-examination.) Transcript pages 419 to 422.

Chapter V.

Certified copy of field-notes from Government land office. Defendants' Exhibit A. Transcript pages 166, 167.

467 Chapter VI.

Four maps from U. S. land office. Defendants' Exhibit B, page 167.

Chapter VII.

Copy of map of Island No. 5 from office of commissioner of the State land office of the State of Michigan. Defendants' Exhibit C, page 167.

Chapter VIII.

Skeels' map of banks of Grand river and Islands 2, 3, and 5. Defendants' Exhibit 4, page 174.

Chapter IX.

Skeels' map of Island No. 5, locating the island (as he states) with reference to present lines. Defendants' Exhibit 5, page 174.

Chapter X.

The Hollister map. Defendants' Exhibit —, page- 372, 423.

Chapter XI.

Proceedings of common council of the city of Grand Rapids, and in the superior court of Grand Rapids, in relation to the opening of East Fulton street from Waterloo street east to the Grand river, and assessment-rolls therefor. Defendants' Proofs, page- 372, 374, 376, 380.

Chapter XII.

Receipts to G. R. & I. R. R. Co., for taxes and other charges against Island 5, from 1874 to 1889. Defendants' Proofs, pages 376, 379.

Chapter XIII.

Certificate of governor of Michigan of completion of the Grand Rapids and Indiana railroad, from the State line to Bridge street in the city of Grand Rapids.

468 Chapter XIV.

Section of map of city of Grand Rapids, showing district including the premises in question. The original map is one published by Collar & Greiner in 1884.

Chapter I.

Certified copy of field-notes from the office of the commissioner of the State land office of the State of Michigan. Complainant's Exhibit A. Transcript page 166.

Official Certificate.

STATE OF MICHIGAN (STATE LAND OFFICE),
LANSING, *July* 21, 1888.

I, Roscoe D. Dix, commissioner of the State land office, do hereby certify that the annexed is a true copy of the full field-notes of the Government survey of sections 25 and 36, in township seven (7), north of range twelve (12), west, meridian, Michigan.

That I have carefully compared the said copy with the original thereof, now on file and of record in my office, and that it is a correct transcript therefrom, and of the whole thereof.

In testimony whereof, I have hereunto subscribed my
[SEAL.] *my* name, and have caused the seal of this office to be affixed.

469 Done at the city of Lansing on the day and year above written.

ROSCOE D. DIX,
Commissioner of the State Land Office.

MAP.—On reverse side of this certificate is the map accompanying the field-notes of sections 25 and part of 36.

Township 7 north, range 12 west, mer. Mich.

Field-notes of U. S. Survey of Sections 25 *and* 36, *T.* 7 *N., R.* 12 *W.*

South boundary, var. 4 deg. 05 min. E.

West. On S. side of sec. 36.
From post cor. towns. 6 and 7 north, range 11 and 12 west.
Y. oak 14 N. 15 E. 246.
W. oak 18 N. 58 W. 384.
17.55 W. oak 16 in. dia.
10.00 Enter timber land.
35.00 Leave timbered land and enter openings.
40.00 Set qr. sec. post.
W. oak 12 N. 75 W. 21.
W. oak 14 N. 2 W. 21.
71.50 An Indian path course N. W. and S. E.
80.00 Set post cor. sects. 35 and 36.
W. oak 12 N. 42 W. 54.
W. oak 14 N. 75 E. 259.
Land rolling and sec'd rate elm, ash and oak.
Surveyed in 1831 by—

L. LYON, *D. S.*

East boundary, var. 5 deg. 45 min. E.

North.	On E. side of sec. 36.
28.61	W. oak 18 in. dia.
40.00	Set qr. sec. post.
	W. oak 12 S. 22 W. 71.
470	W. oak 18 N. 1 W. 54.
63.55	W. oak 14 in. dia.
80.00	Set post cor. secs. 25 and 36.
	W. oak 30 N. 86 W. 1.25.
	W. oak 14 S. 5½ W. 1.45.
	Land level sec'd rate B. and W. oak, &c.
North.	On E. side of sec. 25.
31.41	W. oak 17 in. dia.
40.00	Set qr. sec. post.
	W. oak 14 south 24.
	W. oak 14 N. 23 W. 1.08.
42.00	An Indian path crs. N. W.
54.01	An elm 12 in. dia.
80.00	Set post cor. secs. 24 and 25.
	B. oak 12 S. 40 W. 16.
	W. oak 12 N. 26 W. 38.
	Land rolling and 2nd rate oak, elm, ash.

February 24th, 1831.
Surveyed by—

J. MULLETT, *D. S.*,
For L. LYON, *D. S.*

Subdivisions, var. 5 deg. 45 min. E.

North.	Between secs. 35 and 36.
29.65	W. oak 10 in. dia.
40.00	Set qr. sec. post.
	W. oak 11 S. 69 W. 38.
	W. oak 18 S. 81 E. 38.
52.50	An ironwood 10 in. dia. and enter river bottom.
58.85	To Grand river, hackberry 8 in. dia. cor. on left bank.
	Mission church at Indian village below Thomas mission
471	on the other side of river bears N. 33 E.
	Land rolling and 1st rate W. and B. oak, &c.
West	Between sects. 25 and 36.

Var., 4 deg. 10 min. E.

8.00	Stream 3 lks. wide course N. E. and ent. marsh.
16.00	Leave the marsh.
40.00	Set qr. sec. post.
	W. oak 6 N. 38 E. 12.
	B. oak 7 S. 10 W. 57.
44.59	Elm 10 in. dia. on left bank of Grand river.
	Land rolling and sec'd rate oak &c., church at Indian village N. 43 W.

West Between secs. 24 and 25.
1.00 Enter river bottoms.
20.50 To left bank of Grand river set post.
Br. oak 12 N. 61 E. 45.
Elm 9 S. 27 E. 1.25.
Land rolling and sec'd rate oak, ash, elm, lyme.
April 29, 1831.

L. LYON, *Dep. Sur.*

Frac. north of Grand river, var. 6 deg. 06 min. E.

North Between secs. 35 and 36.
From post on S. side of river, 58.85 chs. N. of T. line.
65.50 To a low island.
66.20 Leave do. and set post.
69.26 To right bank of Grand river.
Maple 20 in. dia. cor. tree.
80.00 Set post cor. secs. 25, 26, 35 and 36.
B. oak 6 S. 39½ W. 3.74.
W. oak 14 N. 38⅛ W. 550.
No description given.
East On R. and on between sects. 25 and 36.
29.87 Just opposite old post or tree 1.50 N.
472 Land old Indian field.

West. Connect between secs. 25 and 36 from old cor.
14.42 Set post on right bank of Grand river.
Maple 6 N. 78¾ E. 38.
Hickory 18 S. 70 W. 2.31.
29.87 Sec. corner.
North Between secs. 25 and 26.

Var. 6 deg. E.

6.00 Leave Indian improvement runs N. 54 E.
17.00 To a road course W.
40.00 Set qr. sect. post.
W. oak 12 S. 70⅓ W. 65.
Do. 8 N. 18½ W. 87.
54.41 W. oak 12 in. dia.
56.00 To marsh near N. E. end.
59.00 Leave marsh in low heavy timb'd land.
71.37 W. oak 15 in. dia.
80.00 Set post cor. secs. 23, 24, 25 and 26.
B. ash 7 S. 32 E. 19.
Sp. oak 7 N. 47 W. 30.
South of marsh land rolling, oak timber mostly cut off, und'g'th, same with 60 chs. level, mostly wet Sp. oak, B. oak, lyme, elm &c.
East On R. and one btwn. secs. 24 and 25.
10.00 Leave woods in chopping.
17.00 Clemens' house 200 chs. N.

22.00	Enter a marsh.
28.50	Leave do. in mission improvement.
45.70	To right bank of Grand river.
58.55	Over river 39 N. of meander post.
	Land &c. similar and sec'd rate.
West	Correct line betw'n secs. 24 and 25.
12.85	To right bank of Grand river set post.
473	W. oak 20 N. 21 E. 18.
	Do. 3 S. 40 W. 26.
16.30	To mission school-house 1.50 south other houses (mission) from 2.50 to 6.00 chs. further south.
18.55	Set qr. sec. post.
	W. oak 10 N. 2 W. 270.
	Hickory 7 N. 66¼ W. 278.

R. WHITCOMB, *D. S.*

Meanders of Grand River.

Began at post on line btwn. secs. 24 and 25, right bank down stream.

S. 17.50 W.	11.80	In sec. 25 at 3.21 Baptist mission school-house, bears N. 58 W. 293 lks. distant.
		Mission house, S. 65¼ W. 185 lks. dist.
S. 5 W.	4.21	A tree on head of Island No. 1 Grand Rapids, bears S. 44½ E.
S. 3½ E.	2.85	At 60 lks. spring branch 10 lks. wide.
S. 9 E.	5.09	Sycamore bush on head of Island No. 2, bears S. 81¾ E.
S. 6¾ E.	5.29	Tree on head of Island No. 1 S. 89½ E. bush on head of Island No. 2 N. 71¾ E.
S. 9.40 W.	10.51	Tree on ft. of Isle No. 1 N. 85¾ E. at 261 ft. of Isle No. 1 S. 84½ E.
		Willow head of Isle 3 S. 71 E.
S. 32½ W.	5.90	Do. " " N. 80 E.
S. 32½ W.	4.13	At ferry foot of rapids sec. 25.
S. 45.10 W.	5.58	At Indian mound and burying ground.
S. 31.25 W.	3.36	
S. 35 W.	8.09	Catholic chapel N. 61⅜ W.
		Meeting house S. 79½ W. (Baptist.)
S. 28 W.	21.82	At 9.43 C. chapel N. 10.5 W.
		M. house N. 47.5 W.
		At 18.00 ft. of Island No. 3 S. 53½ E.
474		" 21.82 " do. do. S. 88 E.
S. 45.5 W.	3.75	To post in line of sects. 25 and 36.
S. 52.20 W.	4.50	In sec. 36 river 7.00 wide.
S. 60½ W.	13.64	To line of secs. 35 and 36.
		Opposite head of island (R. 861 wide).

R. WHITCOMB, *D. S.*

Meanders of Grand River, Left Bank.

Upstream from line of secs. 35 and 36.

N. 58	E.	6.00	In sec. 36.
N. 66	E.	11.00	
N. 51	E.	10.00	At 9 chs. mouth of stream 50 fr. E.
N. 60	E.	11.00	
N. 38	E.	3.00	To post in line of sect. 25 and 36. Opposite foot of island.
N. 46	E.	11.00	In sec. 25.
N. 33	E.	19.00	A- 4 chs. stream 20 lks. wide fr. E.
N. 25	E.	14.00	
N. 16	E.	10.00	At 8 chs. opposite head of island.
N. 30	E.	10.00	" 5 " to foot of another do.
N. 25	W.	6.00	
N. 50	W.	4.00	At 3 chs. Campau's house op. head of island.
N. 10	W.	11.00	
North		6.62	To post in line btwn. sect. 24 and 25 just above foot of rapids and nearly oppo- mission house.

April, 1831.

L. LYON, *D. S.*

Meanders of Island No. 1, *in Grand River.*

Begin at sycamore on head of island.

S. 23½	E.	4.44	In sec. 25.
S. 16½	E.	2.00	
S. 36¼	W.	4.52	To foot of island opposite Godfrey's wharf and steamboat landing.
475			
N. 3.30	E.	2.10	
N. 1½	W.	3.44	
N. 3½	E.	4.12	To place of beginning. Channel between this and Island No. 2 is shallow and rocky, 120 wide course to head of low willow island, S. 10 W. 300 chs.

Meanders of Island No. 2.

Begin at post 25 S. of sycamore stump and bush on head of island in sec. 25.

S. 60¾	E.	2.26	East channel nearly filled with sand bar.
S. 33¾	E.	1.46	Channel 250 lks. wide.
S. 19.50	E.	3.31	
S. 24¾	W.	1.42	Opposite G. R. hotel.
S. 40.35	W.	2.66	To maple 48 in. dia. on foot of island.
N. 8	W.	2.51	
N. 20.10	W.	2.54	
N. 33.20	W.	2.15	

N.	3.25	E.	1.25
N.	38.35	E.	1.15

To place of beginning.

Island No. 1 and 2 valued at from two to three thousand dollars each.

Meanders of Island No. 3, in Grand River.

Begin at post on lower end of island, thence—

N.	36.20	E.	1.19
N.	34½	E.	1.87
N.	35¾	E.	2.14
N.	31¾	E.	4.90
N.	33.05	E	4.41
N.	27.20	E.	3.25
N.	35	E.	1.54
N.	42	E.	4.28

476

N.	46.10	E.	4.00
N.	48	E.	1.46
N.	49	E.	2.79
S.	24¼	E.	1.27
S.	6.55	W.	2.25
S.	34.50	W.	6.95
S.	39½	W.	6.08
S.	44¼	W.	2.59
S.	45¾	W.	3.72
S.	44¼	W.	3.58
S.	44	W.	3.81
S.	52½	W.	2.10

To maple on head of island.

Channel between this and low willow isle 75.3 ft. deep.

Opposite ft. of willow isle on left.

250 of low wet ground on left to channel.

To place of beginning. The east channel is about one-half the width of the W., but deeper.

Meanders of Island No. 4, in Grand River.

Begin at post in line of secs. 35 and 36.

N.	64.20	E.	.97
N.	70	E.	1.04
S.	43½	W.	1.02
S.	50.20	W.	2.31
S.	38.35	W.	1.73
S.	57.25	W.	2.90
S.	66.05	W.	3.14
S.	68.10	W.	2.35
S.	73¾	W.	1.26
N.	42.10	E.	2.46
N.	48¾	E.	1.87
N.	60¼	E.	2.32

To head of island.

To lower end of island.

N. 58.40 E.	3.10	
N. 63 35 E.	1.43	
N. 70.10 E.	1.36	To place of beginning.

Aug. 24, 1837.

R. WHITCOMB, *Dep. Sur.*

477 *Survey of Island No. 5, in Grand River.*

Began at ¼ post on E. line of township and E. side of sec. 25, thence—

West	24.00	To left bank of Grand river.
West	4.02	Across water by triang. N. to E. side Isle No. 2.
N. 8.30 E.	1.23	
S. 40.29 W.	1.59	
S. 40.29 W.	3.97	
S. 34 W.	5.50	
S. 6.45 E.	2.81	
East	1.25	
N. 37.30 E.	6.73	
N. 11.15 E.	1.74	
N. 8.30 E.	3.35	Containing a. 2.56.

Var. 2 deg. 30 min. E.

Timber gone except a few trees of maple, elm, etc., soil sandy, alluvian, quality 2d rate. Valuable for lying in the city of Grand Rapids.

Sept., 1855.

THOS. WHELPLEY, *Dep. Sur.*

Chapter 2.

Records and entries in the office of the register of deeds of the county of Kent, introduced by complainant to prove his title to the lands in controversy.

Transcript, pages 104 to 117.

The complainant introduced the following:

1. Tract book kept in the office of the register of deeds for Kent county, containing the following entries: Description of tract
478 N. fl. of S. E. ¼ sec. 25, township 7 north, range 12 west; contents, 48 acres; rate per acre (blank); purchase-money (blank); name of purchaser, Lucius Lyon and Erotus P. Hastings; number of register's return (blank); date of sale, Sept. 25, 1832; number of receipt (blank); number of certificate of receiver (blank); to whom patented (blank); date of patent (blank); where recorded (blank).
2. Scranton abstract books containing the following entries:

Grantor.	Grantee.	Liber.	Page.	Date of instrument.	Date of record.	Con's.	Kind of ins't.	Description.
United States.....	Lucius Lyons and E. P. Hastings.	M.	450	Nov. 5, 1833	Sept. 26, 1849	.....	Patent...	N. fr. S. E. ¼, sec. 25, T. 7 N., R. 12 W.
Drury Fairbanks.....	Neh. O. Sargeant.....	C.	104	May, 1836	May 16, 1837	.....	Q. C.....	Und. ¼, und. ¾, N. fr. S. E. ¼.
Charles H. Carroll.....	R. S. Rice, adm'r of N. O. Sargeant.	J.	63	Oct. 2, 1844	Sept. 12, 1846	.....	.....	All his int. in und. ½ of N. fr. S. E. ¼.
N. O. Sargeant, by administrator, R. S. R.	James M. Nelson.....	K.	571	Jan. 11, 1848	April 15, 1848	$256	.....	Und. ½ land bet. Water St. and Grand river.
Lucius Lyon.....	George W. Thayer ...	L.	570	March 26, 1849	March 28, 1849	.....	.....	Ass't of all property in G. R.
Charles H. Carroll	John Almy.....	A.	291	August 1, 1836	Sept. 22, 1836	.....	P. of att'y	To convey lands bought of N. O. Sargeant.
Lucius Lyon.....	John Almy	A.	289	Sept. 9, 1836	Sept. 22, 1836	.....	P. of att'y	To convey lands in village of Kent.
N. O. Sargeant and wife.	Charles H. Carroll ...	A.	70	July 25, 1836	July 25, 1836	.....	.....	Und. ¼ N. fr. S. E. ¼, ex. 15 lots sold Backus, and like number to be to N. O. Sargeant. See C., 106 p., for deed of lots to be conveyed to Sargeant. See Mis. Records, page 1, for certain agreements. Re-record. in 24, 218.
James M. Nelson and wife.	Daniel Ball	Q.	569	March 13, 1852	April 1, 1852	.....	.....	Und. 1-12 land lying S. of ¼ line and W. of Water St.

480 3 books of records in the office of the register of deeds, containing records of the following conveyances, to wit:

Liber 24 of Deeds, containing records of conveyances, as follows: Page 6, deed from Lyon and Hastings to Charles C. Trowbridge; page 10, deed from Lyon to Arthur Bronson; page 61, deed from Charles C. Trowbridge to N. O. Sargeant; page 62, deed from Charles C. Trowbridge to Drury Fairbanks; page 155, deed from Arthur Bronson to Lucius Lyon; page 193, deed from N. O. Sargeant to Lucius Lyon; page 90, power of attorney, Drury Fairbanks and wife to Sargeant; page 194, deed from Drury Fairbanks to Lucius Lyon; page 218, deed from Lucius Lyon to N. O. Sargeant.

Liber 67 of Deeds, containing record of following conveyance, page 635, deed from Hastings and wife to Lucius Lyon.

Liber U containing the following record: Page 240, deed from James M. Nelson and wife to Daniel Ball; page 488, deed from George W. Thayer to Daniel Ball.

Liber 43 of Deeds containing the following record: Page 568, deed from Daniel Ball and wife to Byron D. Ball.

Liber 58 of Deeds, page 573, record of deed from Byron D. Ball and wife to Dennis W. Bryan.

Plat Book No. 2, containing on page 17 the record of the plat of Bryan & Ball's subdivision.

Liber 64 of Deeds, page 171, deed from Bryan to Butler of lot 5; page 163, deed from Bryan to John Gezon of lot 8; Liber 85, page 362, record of deed from Bryan to Butler of lot 6, 7, and 9.

Liber 86, page 264, record of deed from Gezon to Butler of lot 8; Liber 70, page 191, record of deed from Bryan to John Bole, north ½ of lot 13.

481 Liber 79, page 492, record of deed from Bole to James McHugh, north ½ of lot 13; Liber 81, page 376, record of deed from James McHugh to Jane A. McHugh, north ½ of lot 13; Liber 86, page 95, record of deed from Jane A. McHugh to James Elliott; Liber 103, page 357, record of deed from Lawrence W. Wolcott, a circuit court commissioner of said county, to John Butler, north ½ of lot 13.

The contents of the records in said books of said several conveyances are stated in the preceding transcript of the notes of the trial, pages 104 to 117. So far as to show the names of the parties, the date of the conveyance, the description therein contained of the premises conveyed and the place where recorded, by consent of both parties, the formal parts of the conveyances as shown by such records are here omitted, the same containing nothing material in this controversy, and the substantial parts of each conveyance appearing by the record aforesaid.

From this statement is excepted the following conveyances:

Liber U, page 240, deed from James M. Nelson to Daniel Ball; Liber 43, page 568, record of deed from Daniel Ball to Byron D. Ball; Liber 58, page 573, deed from Byron D. Ball to Dennis W. Bryan.

Liber 85 of Deeds, page 362; deed from Dennis W. Bryan and wife to John W. Butler, of lots 6, 7. and 9.

Liber 86 of Deeds, page 264; deed from John Gezon, Jr., to John Butler, lot 8.

A copy of the map of the Bryan & Ball's subdivision, recorded in Liber 2 of Plats, page 17, is appended hereto. A copy of the certificate annexed to said map appears in the preceding transcript, pages 114 and 115.

This map and the said certificate constitute the entire plat of record.

The following is a full description of the premises conveyed by the deed from Hastings to Lyon, shown by the record in Liber 67, page 635:

482 Also all the equal undivided one-third part of two lots of land lying at the falls of Grand river, in the said territory, known and described as follows, namely: The east fraction of sec. 24, in town 7, N. R. 12 W., containing 135 acres, and the north fraction of the southeast quarter of sec. 25, in town 7, north range 12 west, containing 48 acres.

Deed.

James M. Nelson and wife to Daniel Ball.

Liber U, page 240.

This deed was received for record December 29, 1853, at 10.30 o'clock a. m.

F. W. WORDEN, *Register.*

This indenture, made this twenty-ninth day of November, in the year of our Lord one thousand eight hundred and fifty-three, between James M. Nelson and Abba G. Nelson, his wife, of the county of Kent, in the State of Michigan, of the first part, and Daniel Ball, of the city of Grand Rapids, said county and State, of the second part, witnesseth, that the said parties of the first part, in consideration of the sum of seven hundred dollars, to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, have bargained, sold, remised and quitclaimed, and by these presents do bargain, sell, remise and quitclaim unto the said party of the second part, and to his heirs and assigns forever, all that certain piece or parcel of land situate in said county, and known and described as eleven-twelfths ($\frac{11}{12}$) of an undivided one-half of all the lands lying between Water street and Grand river, in the town of Grand Rapids (now city), in the county and State aforesaid, according to the Kent plat thereof, recorded on the ninth day of December, A. D. 1847, in the office of the register of deeds of said Kent county, and being part and parcel of the same lands conveyed to said James M. Nelson, on the eleventh day of January, A. D. 1848, by R. S. Rice, administrator of

483 the estate of Nehemiah O. Sargeant, late of Wayne county, in said State, as will more fully and at large appear by the record thereof in Liber K of Deeds, on pages 571 and

572, in the register of deeds' office, in the county of Kent, and State of Michigan; reference being thereto had, together with all and singular, the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of the said parties of the first part, either in law or equity, of, in and to the above-bargained premises, with the said hereditaments and appurtenances, to have and to hold the said premises to the said party of the second part, his heirs and assigns, to the sole and only proper benefit and behoof of the said party of the second part his heirs and assigns forever.

In witness whereof the parties of the first part have hereunto set their hands and seals the day and year first above written.

JAMES M. NELSON. [SEAL.]
ABBY G. NELSON. [SEAL.]

Sealed and delivered in presence of—
JOHN A. BRIDGE.
TH. FOOTE, JR.

STATE OF MICHIGAN, } ss:
Kent County, }

On this twenty-ninth day of November, A. D. 1853, before me, a justice of the peace in and for said county of Kent, personally came the above-named James M. Nelson and Abby G. Nelson, his wife, known to me to be the persons who executed the foregoing instrument, and acknowledged the same to be their free act and deed, and the said Abby G. Nelson, wife of said James M. Nelson, having been by me examined separate and apart from her said husband, and fully understanding the contents of the foregoing instrument, ac-
484 knowledged that she executed said deed freely and without any fear or compulsion from her said husband or from any one.

THADDEUS FOOTE, JR.,
Justice of the Peace, Kent County, Michigan.

Certificate of register of deeds.

From Daniel Ball and wife to Byron D. Ball.

Liber 43, page 568.

Received for record November 22nd, A. D. 1866, at 4 o'clock p. m.
JOHN R. STEWART, *Register.*

This indenture, made the eighth day of November, in the year of our Lord one thousand eight hundred and sixty-six, between Daniel Ball and Mary A. Ball, his wife, of the city, county and State of New York, parties of the first part, and Byron D. Ball of the city of Grand Rapids, county of Kent, Michigan, of the second part, witnesseth, that the said parties of the first part, for and in considera-

tion of the sum of one hundred dollars, to them in hand paid by the said part of the second part, the receipt whereof is hereby confessed and acknowledged, do by these presents, grant, bargain, sell, remise, release, and forever quitclaim unto the said party of the second part, and to his heirs and assigns forever, all that certain piece or parcel of land, situated in the city of Grand Rapids, Michigan, particularly known and described as that strip of land lying on the east bank of Grand river and west of Water and Waterloo streets, bounded on the south by the Ellsworth plat, so-called, to said city of Grand Rapids, and on the north by the north line of Fulton street were the same drawn westerly to Grand River, said parcel of land being upon the Kent plat of said city. Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining: To have and to hold the said described premises to the said party of the second
485 part, and to his heirs and assigns, to the sole and only proper use, benefit and behoof, of the said party of the second part, his heirs and assigns, forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

DANIEL BALL. [SEAL.]
MARY A. BALL. [SEAL.]

Signed, sealed and delivered in presence of—

CHARLES NETTLETON.
M. OHEARNE, JR.

U. S. revenue stamp, $0.50. D. B. Nov. 19, 1866.

STATE OF NEW YORK, }
County of New York, } *ss*:

On this nineteenth day of November, one thousand eight hundred and sixty-six, before me, Charles Nettleton, a commissioner for the State of Michigan, in New York, personally appeared Daniel Ball and Mary A. Ball, his wife, known to me to be the same persons who executed the foregoing instrument, and acknowledged the same to be their free act and deed. And the said Mary A. Ball upon a private examination by me, separate and apart from her said husband, acknowledged before me that she executed the same freely and without any fear of or compulsion from any one.

In witness whereof, I have hereunto set my hand and affixed my official seal this 19th day of November, A. D. 1866.

CHARLES NETTLETON,
[SEAL.] *Commissioner for Michigan in New York.*

Certificate of register of deeds.

486 From Byron D. Ball and wife to Denis W. Bryan.

Liber 58, page 573.

Received for record March 23, A. D. 1869, at 11½ o'clock, a. m.
WM. G. BECKWITH, *Register.*

This indenture, made this eleventh day of March, in the year of our Lord one thousand eight hundred and sixty-nine, between Byron D. Ball and Martha M. Ball, his wife, of the city of Grand Rapids, in the county of Kent and State of Michigan, party of the first part, and Dennis W. Bryan, of the same place, party of the second part, witnesseth, that the said parties of the first part, for and in consideration of the sum of three thousand dollars, to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, have granted, bargained, sold, remised, released, aliened, and confirmed, and by these presents do grant, bargain, sell, remise, release, alien and confirm unto the said party of the second part, his heirs and assigns, forever, all that certain piece or parcel of land, situate, lying and being in the city of Grand Rapids, State of Michigan, particularly known and described as all that strip of land lying on the east bank of Grand river and west of Water street, bounded on the north by center line of Fulton street were the same continued westward to Grand river, and on the south by a line parallel with said north line and five hundred feet northerly from the north line of Cherry or Ellsworth street.

All on and according to the Kent plat of said city, intending hereby to convey all of that strip of land between Water street and Grand river, except (500) five hundred feet off from the south end thereof.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining; and the reversion and reversions, remainder and remainders, rents,
487 issues, and profits thereof; and all the estate, right, title, interest, claim, and demand whatsoever, of the said party of the first part, either in law or equity, of, in and to the above-bargained premises, with the tenements, hereditaments and appurtenances; to have and to hold, the said premises, as above described, with the appurtenances, unto the said party of the second part, and to his heirs and assigns, forever. And the said party of the first part, for himself and his heirs, executors, and administrators, do covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns, and at the time of the ensealing and delivery of these presents they are well seized of the premises above described, as of a good, sure, perfect, absolute and indefeasable estate of inheritance in the law in fee-simple; and that the said lands are free from all incumbrances whatever, and that the above-bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons, lawfully claiming or to claim, the whole or any part thereof, they will forever warrant and defend.

In witness whereof, the said parties of the first part, have hereunto set their hands and seals the day and year first above written.

BYRON D. BALL. [L. S.]
MARTHA M. BALL. [L. S.]

Signed, sealed, and delivered in presence of—
ANDREW J. REEVES.
HEMAN J. BARLOW.

[U. S. revenue stamp, $300 B. D. B. March 1, 1869.]

STATE OF MICHIGAN, } ss:
County of Kent, }

On this twelfth day of March, one thousand eight hundred and sixty-nine, before me, a notary public in and for said county, personally appeared Byron D. Ball and Martha M. Ball, his wife,
488 known to me to be the persons who executed the foregoing instrument, and acknowledged the same to be their free act and deed. And the said Martha M. Ball, wife of the said Byron D. Ball, on a private examination by me, separate and apart from her said husband, acknowledged that she executed the same freely and without any fear or compulsion from any one.

ANDREW J. REEVES,
Notary Public, Kent Co., Mich.

Certificate of register of deeds.

From Dennis W. Bryan and wife to John Butler.

Liber 85, page 362.

Received for record March 21st, A. D. 1873, at 4 o'clock p. m.
SIMEON HUNT, *Register.*

This indenture, made this twenty-first day of March, in the year of our Lord one thousand eight hundred and seventy-three, between Dennis W. Bryan and Mary E. Bryan, his wife, of the city of Grand Rapids, and State of Michigan, of the first part, and John Butler of the same place, party of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of four thousand three hundred (4,300) dollars, to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, does by these presents grant, bargain, sell, remise, release, alien, and confirm, unto the said party of the second part, and to his heirs and assigns, forever, all of those certain pieces or parcels of land known and described as follows, to wit: Lots numbered six (6), seven (7), and lot nine (9), of Bryan & Ball's subdivision plat of a portion of the plat of the village of Kent (now city of Grand Rapids) the same being of record in the recorder's office in the county of Kent and State of Michigan, where said property is situated, and on Water street, east side of Grand
489 river, and extending from said Water street to said Grand river, in the aforesaid city of Grand Rapids.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining; to have and to hold the said premises, as described, with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever. And the said party of the first part, for themselves, their heirs, executors, administrators and assigns, does covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents, they are well seized of the above-granted premises in fee-simple; that they are free from all incumbrances whatever; and that they will, and their heirs, executors, administrators, and assigns, shall warrant and defend the same against all lawful claims whatsoever.

In witness whereof, the said party of the first — have hereunto set their hands and seals the day and year first above written.

DENNIS W. BRYAN. [L. S.]
MARY E. BRYAN. [L. S.]

Signed, sealed, and delivered in presence of—
M. B. BROWN.
A. W. FISK.

STATE OF MICHIGAN, } ss:
County of Kent, }

On this twenty-first day of March, one thousand eight hundred and seventy-three, before me, a notary public for said county, personally appeared Dennis W. Bryan and his wife Mary E. Bryan, known to me to be the persons who executed the foregoing instrument and acknowledged the same to be their free act and deed. And the said Mary E. Bryan, wife of the said Dennis W. Bryan, on a private examination by me, separate and apart from
490 her said husband, acknowledged that she executed the same freely and without any fear or compulsion from any one.

A. W. FISK,
Notary Public, Kent Co., Mich.

Certificate of register of deeds.

From John Gezon, Jr., and wife to John Butler.

Liber 86, page 264.

Received for record June 17th, A. D. 1873, at 11.45 o'clock a. m.
SIMEON HUNT, *Register.*

This indenture, made this tenth day of June, in the year of our Lord one thousand eight hundred and seventy-three, between John Gezon, Jr., and his wife, Lene Gezon, of Grand Rapids and State of Michigan, party of the first part, and John Butler, of the aforesaid place, party of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of sixteen hundred dollars to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, doth by

these presents grant, bargain, sell, remise, release, alien and confirm unto the said party of the second part, and to his heirs and assigns, forever, all of lot numbered eight (8) of Bryan & Ball's subdivision plat of a portion of the plat of the village of Kent (now city of Grand Rapids), the same being of record in the recorder's office in the county of Kent and State of Michigan, where said property is situated, and on Water street, east side of Grand river, and extending from said street to said Grand river in the aforesaid city of Grand Rapids. (The word "one" erased before execution.)

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining; to have and to hold the said premises, as described, with the appurtenances,
491 unto the said party of the second part, and to his heirs and assigns forever. And the said party of the first part, for themselves, heirs, executors, administrators and assigns, doth covenant, grant, bargain and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents, they are well seized of the above-granted premises in fee-simple; that they are free from all incumbrances whatever, and that we will, and our heirs, executors, administrators and assigns, shall warrant and defend the same against all lawful claims whatsoever.

In witness whereof, the said party of the first part hath hereunto set their hands and seals the day and year first above written.

JOHN GEZON, JR. [L. S.]
LENE GEZON. [L. S.]

Signed, sealed, and delivered in presence of—
W. H. VAN LEEUWEN, JR.
K. J. TANNER.

STATE OF MICHIGAN, } ss:
County of Kent, }

On this seventeenth day of June, one thousand eight hundred and seventy-three, before me, a notary public in and for said county, personally appeared John Gezon, Jr., and his wife, Lene Gezon, known to me to be the persons who executed the foregoing instrument, and acknowledged the same to be their free act and deed, and the said Lene Gezon, wife of the said John Gezon, Jr., on a private examination by me, separate and apart from her said husband, acknowledged that she executed the same freely and without any fear or complulsion from any one.

W. H. VAN LEEUWEN, JR.,
[SEAL.] *Notary Public, Kent County, Michigan.*

Certificate of register of deeds.

Plat of Bryan & Ball's Subdivision.

A copy of the recorded plat is in the original case and reference is made thereto. It cannot be duplicated for the purposes of this printed record.

492 Chapter 3.

Record of patent from the United States to the Grand Rapids and Indiana Railroad Company. Recorded in Liber 183, page 1. Introduced by complainant.

United States of America to all to whom these presents shall come, Greeting:

Whereas, by the act of Congress approved June 7, 1864, being an act to amend an act entitled "An act making a grant of alternate sections of the public lands to the State of Michigan to aid in the construction of certain railroads in said State, and for other purposes," it is declared that the same is hereby amended as follows: Substitute for the words "and from Grand Rapids to some point on or near Traverse bay," contained in the first section of the original act of June 3d, 1856, these words: "And from Fort Wayne in the State of Indiana to a point on the southern boundary line of the State of Michigan in the township of Sturgis; thence by way of Grand Rapids to some point on or near Traverse bay;"

And, whereas it is further enacted that the lands so to be selected shall in no case be further than twenty miles from the line of said road, and by the act of March 3d, 1865, the time for completion of road extended eight years,

And, whereas, there has been filed in this office, through the Secretary of the Interior, under dates of December 31, 1868, and September 13, 1869, evidence of the completion of the first and second twenty miles of said road, commencing at the city of Grand Rapids, in the State of Michigan, and ending at a point in the township of Ætna, in the county of Mecosta, in said State;

And, whereas, the sections and part of sections of lands enuring to the State of Michigan in aid of the construction of the Grand Rapids and Indiana railroad, for the said completed forty
493 miles of road, a portion has been duly selected and reported to this office in accordance with the act and the rules and regulations of the General Land Office, as shown by the original lists of selections dated September 16th, October 2d and 4th, November 5th, December 3d, 1869; February 10th, March 17th and April 5th, 1870; and certified under dates of October 15th, December 3d, 1869, January 15th, February 10th and 12th, April 6th and 14th, 1870, by the registers and receivers at Ionia and Traverse City, Michigan, the tracts being described as follows, to wit: * * * township seven, range 12 north of base line and west of principal meridian, Island No. 5 in Grand river, of section 25, containing two acres and $\frac{56}{100}$ of an acre * * *

Now, know ye, that the United States of America, in consideration of the premises and pursuant to the said acts of Congress, have given and granted and by these presents do give and grant unto the said State of Michigan, for the use and benefit of the Grand Rapids & Indiana Railroad Company of said State, and its assigns, the tracts of land selected as aforesaid and described in the foregoing.

To have and to hold the said tracts with the appurtenances thereof

unto the said State, for the use and benefit of said Grand Rapids & Indiana Railroad Company and its assigns forever.

In testimony whereof, I, Ulysses S. Grant, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand and seal at the city of Washington, this 28th day of March, in the year of our Lord one thousand eight hundred and seventy-one, and of the Independence of the United States the ninety-fifth.

By the President:

[SEAL.] U. S. GRANT,
By J. PARRISH, *Secretary.*

I. N. GRANGER,
Recorder of the General Land Office.

494 STATE OF MICHIGAN:

This patent received at the land office at 12 o'clock m. on the 5th of April, 1871.

C. A. EDMONDS,
Commissioner.

The patent was recorded in the office of the register of deeds, Kent county, August 9th, 1887.

It covers many thousands of acres of land and none in town. 7 north, in range 12 west, other than herein stated.

Chapter 4.

Entries in tract book in office of register of deeds, Kent county, relating to islands numbered one, two, three and four in Grand river, and to certain parts of section 25, township 7, 12 west. (Entries as to islands introduced by complainant. Other entries called out on cross-examination.)

See pages 419 to 422.

Description of tract: East fraction of northeast quarter section 25, township 7, north range 12 west; contents 72.15 acres; rate per acre, (blank); purchase-money, (blank); name of purchaser, Louis Campau, Jr.; number of register's return, (blank); date of sale, September 19, 1831; number of receipt, (blank); number of certificate of receiver, (blank); to whom patented, (blank).

Description: South fraction of southeast quarter, same section 25; contents, 72 acres; rate per acre, (blank); purchase-money, (blank); name of purchaser, Henry L. Ellsworth; date of sale, September 25, 1832.

Description, islands in Grand river, one and two, opposite section 25, town aforesaid: Contents, 3.49 acres; name of purchaser, Louis Campau; date of sale, (blank); to whom patented, Louis Campau; date of patent, August 10, 1841; recorded, Liber 18, page 481.

Description, island in Grand river, No. 3, opposite section
495 25: Contents, $9\frac{1}{100}$ acres; rate per acre, $1.25; purchase-money, $11.26; name of purchaser, Richard Godfroy; num-

ber of register's return, 4187; date of sale, August 3, 1839; number of receipt, 4187; number of certificate, 4187; to whom patented, Richard Godfroy; date of patent, August 10, 1841; recorded Liber 9, page 167.

Description, Island No. 4, in Grand river, section 28, town 7, 12: Contents, $2\frac{1.0}{100}$ acres; rate per acre, $3.05; purchase money, $6.40; name of purchaser, Aaron B. Russell; number of register's return, 4455; date of sale, August 13, 1839; number of receipt and number of certificate of receiver, 4455; to whom patented, Aaron B. Russell; date of patent, August 25, 1841; recorded liber 9, page 435.

Chapter 5.

Certified copy of field-notes from Government Land Office. Defendant's Exhibit A, transcript pages 166 to 167.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *May* 18, 1888.

I, S. M. Stockslager, Commissioner of the General Land Office, do hereby certify that the annexed extract from the field-notes of the survey of township 7 north, range 12 west, Michigan, is a true and literal exemplification of so much of the official field-notes of said survey on file in this office as said extract purports to represent.

In testimony whereof I have hereunto subscribed my [SEAL.] name and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

S. M. STOCKSLAGER,
Commissioner of the General Land Office.

496 T. No. 7 N., R. No. 12 W. (Mich.)

Meanders of Grand, Upstream on Left Bank.

Courses.			C. L.	Remarks.
N.	32	E.	10.00	In sec. 34.
N.	28	E.	12.00	
N.	50	E.	10.00	
N.	72	E.	10.50	
N.	$62\frac{1}{2}$	E.	1.60	To frac. cor. between secs. 34 and 35.
N.	81	E.	24.00	To Plaster creek 70 lks. wide crs. N. W.
N.	65	E.	6.60	
N.	86	E.	8.50	
N.	57	E.	8.00	
N.	71	E.	10.00	
N.	59	E.	9.50	
N.	69	E.	15.50	
N.	44	E.	3.64	To frac. cor. between secs. 35 and 36.
N.	58	E.	6.00	
N.	66	E.	11.00	
N.	51	E.	10.00	At 9 chs. mouth of stream 50 lks. W.
N.	60	E.	11.00	

Courses.	C. L.	Remarks.
N. 38 E.	3.00	To frac. cor. between secs. 25 and 36 opposite foot of an island.
N. 46 E.	11.00	
N. 33 E.	19.00	At 4 chs. a stream 20 lks. wids crs. W.
N. 25 E.	14.00	
N. 16 E.	10.00	At 8 chs. opposite head of island.
N. 30 E.	10.00	At 5 chs. opposite ft. of another do.
N. 25 W.	6.00	
N. 50 W.	4.00	At 3 chs. Campau's house opposite hd. of island.
N. 10 W.	11.00	
North.	6.62	To frac. cor between secs. 24 and 25 just above the foot of the rapids and nearly opposite the mission house.

497

Courses.	C. L.	Remarks.
N. 13 E.	7.00	Along up the rapids.
North.	38.00	" " " "
N. 25 E.	5.00	" " " "
N. 11 E.	18.00	(Doubtful) the rapids.
N. 17 E.	5.00	At 1.50 mouth of stream 70 lks. W.
N. 6 W.	5.00	
N. 1 E.	3.46	To frac. post between secs. 13 and 24 near head of rapids, in the whole rapids extending about a mile the fall in the river is supposed to be about 15 feet.
N. 10 E.	18.00	In sec. 13.
N. 5 W.	9.00	
N. 16 W.	17.00	
N. 3 E.	34.00	
N. 19 W.	2.72	To frac. cor. between secs. 12 and 13.
N. 1¼ E.	80.25	To frac. cor. between secs. 1 and 12.
N. 19 E.	5.00	In sec. 1.
N. 32 E.	6.00	
N. 62 E.	4.50	
N. 49 E.	1.70	To frac. cor. in range line.

In pursuance of a contract with and instructions from William Lytle, surveyor general of the United States, I have laid out and subdivided a frac. of town. 7 north of range 12 west, south and east of Grand river, Michigan Territory; and I certify that the foregoing are the true, correct and original field-notes of said subdivisions and that the survey has been carefully and faithfully made.

In witness whereof I have herewith affixed my signature in T. 7 N., R. 12, Mich. Ter., this 29 day of April, 1831.

L. LYON, *Dep. Sur.*

Meanders of Grand River.

Begin at post on r't bank in E boundary of township, in bayou, thence down stream, r't bank.

498

Courses.	C. L.	Remarks.
		Bearing of stake on left bank of r. S. 18¾ E. (directly across river).
S. 69.05 W.	6.64	Bearing of above stake S. 60 degrees 50 min. E.
S. 64.10 W.	7.30	Width 760.
S. 37.55 W.	5.34	In sec. 1.
S. 26 W.	2.99	
S. 16¾ W.	5.46	
S. 9.55 W.	2.40	To post between secs. 1 and 12.
		Bearings of stake on left bank S. 4¼ E. river 834 lks. wide.
S. 12¾ W.	2.83	
S. 8 W.	2.86	Bearing of stake N. 62.48 E.
S. ½ W.	7.24	At 480 bayou 15 links south of brook.
S. 6¼ W.	3.34	
S. 4.20 W.	3.04	In sec. 12.
S. 7.40 E.	1.84	
S. ¼ W.	3.68	
S. 3.10 W.	13.79	
S. 4.55 E.	15.84	
S. 11.10 W.	13.20	At 12.60 lks. mouth of creek 30 lks.
S. 1.20 W.	12.27	To line of secs. 12 and 13.
S. 4¼ W.	19.53	River 9 chs. wide.
S. 19¾ W.	12.85	To a deep bayou.
S. 13¼ E.	9.86	At 675 mouth of Indian c'k.
S. 5.37 E.	10.44	
S. 8.20 W.	5.47	In sec. 13.
S. 3.30 E.	4.21	
S. 2¾ W.	9.96	
S. ¼ W.	10.10	To post in line between secs. 13 and 24.
S. 4.10 W.	12.39	In sec. 24.
S. 12 W.	7.40	
S. 9¼ W.	36.75	At 21.86 head of canal S. 86 E,
S. 4½ W.	5.81	At 36.75 " " " N. 42 E.

499

Courses.	C. L.	Remarks.
S. 3.55 E.	12.45	Kent's mill brs. S. 64¼ E.
S. 10¾ W.	7.96	To post between secs. 24 and 25 (mill N. 79½ E.)
S. 17.50 W.	11.80	At 3.21 lks. miss. school-house N. 58 W. 293 and a 3.21 lks. miss. residence S. 65¼ W. 185.
S. 5 W.	4.21	To tree on head of Isle No. 1 G. Rapids S. 44½ E.
S. 3.30 E.	2.85	At 60 lks. a spring branch 10 lks wide.

Courses.	C. L.	Remarks.
S. 9 E.	5.09	A sycamore bush head of Isle No. 2 (Aug't 22, 1837) S. 81 E.
S. 6¾ E.	5.29	Tree on head of Isle No. 1, S. 89½ E. Bush on head of Isle No. 2, N. 71¾ E.
S. 9.40 W.	10.51	260 a tree on ft. Isle No. 1, N. 85¾ E. At 10.51 tree on ft. Isle N. 1, S. 48½ E.
S. 32½ W.	5.90	To a willow head of isle S. 71 E. and a do. head of isle N. 80 E.
Same.	4.13	At ferry and ft. of rapids in sec. 25.
S. 45.10 W.	5.58	At Indian mound and burying ground.
S. 31.25 W.	3.36	
S. 35 W.	8.09	To Catholic chapel N. 61¾ W. meeting-house S. 79½ W. (Baptist).
S. 28 W.	21.82	At 9.40 C. chapel N. 10–5 W. At mission house N. 47–5 W. At 18 chs. ft. of Isle No. 3 S. 53½ E. At 21.82 ft. of Isle do. S. 88 E.
S. 45.5 W.	3.75	To post between secs. 25 and 36. River 7 chs. wide.
S. 52.20 W.	4.50	In sec. 36.
S. 60½ W.	13.64	To line between secs. 35 and 36 opposite head of isle. River 861 wide.
S. 60.50 W.	7.96	In sec. 35.
S. 51.35 W.	12.10	
S. 67¾ W.	12.70	

500

Courses.	C. L.	Remarks.
S. 71¾ W.	8.66	
S. 75¾ W.	12.08	
S. 79¼ W.	3.09	
S. 69.55 W.	7.45	
S. 80.35 W.	22.06	To line between secs. 34 and 35, at 13 chs. mouth of brook 25 lks. wide.
S. 80.35 W.	4.49	River 7.25 chs. wide.
S. 72½ W.	2.90	In sec. 34.
S. 69.50 W.	3.41	At 260 mouth of branch 15.
S. 73.55 W.	2.00	
S. 63.55 W.	7.46	
S. 52.10 W.	7.94	
S. 37 W.	2.87	
S. 38¾ W.	3.62	
S. 34.25 W.	2.60	
S. 23 W.	2.02	
S. 27.35 W.	2.92	
S. 21¼ W.	3.50	
S. 29 W.	2.44	
S. 32½ W.	8.00	To the south boundary Aug't 23, width of river 8 chs.

Meanders of Isle No. 1 in Grand River, in Sec. 25.

Courses.		C. L.	Remarks.
			Begin at sycamore on head of isle.
S. 23½	E.	4.44	
S. 16½	E.	2.00	
S. 36¼	W.	4.52	To ft. island opposite Godfrey's wharf and steamboat landing.
N. 3½	E.	2.10	
N. 1½	W.	3.44	
N. 3½	E.	4.12	To place of beginning channel between this and island No. 2 is shallow and rocky 120 lks. wide crs. to head of low willow island N. 10 W. 3 chs.

501 *Meanders of Isle No. 2.*

Courses.		C. L.	Remarks.
			Begin at post 25 lks. S. of sycamore stump and bush on head of isle in sec. 25.
S. 66¾	E.	2.26	East channel nearly filled with sand bar, channel 250 lks. wide.
S. 33¾	E.	1.46	
S. 19.50	E.	3.31	
S. 24¾	W.	1.42	Opposite Grand River hotel.
S. 40.35	W.	2.66	To maple 48 in ft. of isle.
N. 8	W.	2.51	
N. 20.10	W.	2.54	
N. 33.20	W.	2.15	
N. 3.25	E.	1.25	
N. 38.35	E.	1.15	To place of beginning— Isles No. 1 and 2 valued at from 2,000 to $3,000 each.

Meanders of Isle No. 3 in G. River in Sec. 25.

			Begin at post on lower end of isle, thence
N. 36.20	E.	1.19	
N. 34½	E.	1.87	
N. 35¾	E.	2.14	
N. 31¾	E.	4.90	Part of this isle is under cultivation.
N. 33.05	E.	4.41	
N. 27.20	E.	3.25	
N. 35	E.	1.54	
N. 42	E.	4.28	
N. 46.10	E.	4.00	

Courses.	C. L.	Remarks.
N. 48 E.	1.46	
N. 49 E.	2.79	To maple on head of island.
S. 24½ E.	1.27	Channel between this and low willow isle 75 lks. wide and 3 ft. deep opposite ft. of willow isle on left 250 of low wet ground on left to channel.
502		
S. 6.55 W.	2.25	
S. 34.50 W.	6.95	
S. 39½ W.	6.08	
S. 44¼ W.	2.59	
S. 45¾ W.	3.72	
S. 44¼ W.	3.58	
S. 44 W.	3.81	
S. 52½ W.	2.10	To place of beginning. The E. channel is about ½ the width of the W. but deeper.

Meanders of an Isle in Grand River.

Begin at post in line between secs. 35 and 36.

N. 64.20 E.	97	
N. 70 E.	1.04	To head of isle.
S. 43½ W.	1.02	
S. 50.20 W.	2.31	
S. 38.35 W.	1.73	
S. 57.25 W.	2.90	
S. 66.5 W.	3.14	
S. 68.10 W.	2.35	
S. 73¾ W.	1.26	To lower end of isle.
N. 42.10 E.	2.46	
N. 48¾ E.	1.87	
N. 60¼ E.	2.32	
N. 58.40 E.	3.10	
N. 63.35 E.	1.43	
N. 70.10 E.	1.36	To beginning. (Aug't 24, 1837.)

I hereby certify that in pursuance of a contract with R. T. Lytle, surveyor general of the United States for the States of Ohio, Indiana and Michigan, bearing date the 22nd day of June, 1837, and
503 in strict conformity to the laws of the United States and the instructions of the surveyor general I have surveyed and subdivided into sections, town No. 7 N. in range No. 12 W. in the State of Michigan, and I do further certify that the foregoing are the true and original field-notes of the said survey and subdivision, executed as aforesaid.

Certified this 20th day of September, 1837.

R. WHITCOMB, *Dep. Sur.*

his
MAO x DAVIS,
mark.
his
HENRY x ALDEMAN, } *Chainmen.*
mark.
JOHN FISH, *Marker.*

I certify that the foregoing transcript of field-notes of frac. town No. 7 N., range No. 12 west in Michigan, has been compared with the original in this office and found to be correct.

Surveyor general's office, Cincinnati, July 6, 1840.

E. S. HAINES, *Sur. Gen'l.*

Grand River, Township No. 7 North, Range No. 12 West, Mer'd'n Mich.

Courses.	C. L.	
		Island No. 5 began at quarter post on east line of township east side of sec. 25.
West	24.00	To left bank of Grand river.
West	4.02	Across water by triangulation to east side of Island No. 2.
N. 8.30 E.	1.23	
S. 40.29 W.	1.59	
S. 40.29 W.	3.97	
S. 34 W.	5.50	
S. 6.45 E.	2.81	
East	1.25	
N. 37.30 E.	6.73	
504		
N. 11.15 E.	1.74	Variation 2 degrees 30 minutes east.
N. 8.30 E.	3.35	

Timber gone except a few trees of maple, elm, etc.

Soil sandy alluvian, quality 2nd rate. Valuable for lying in the city of Grand Rapids.

I, Thomas Whelpley, of Monroe, in the county of Monroe and State of Michigan, a deputy surveyor, do solemnly swear that in pursuance of the instructions of Leander Chapman, surveyor general of the United States for Ohio, Indiana and Michigan, dated May 24th, 1854, and in strict conformity to the laws of the United States, I have faithfully and correctly surveyed the islands in Pleasant lake, Skifts lake and Grand river in Michigan, described in the foregoing field-notes, and I do further solemnly swear that the foregoing are the true and original field-notes of the said survey executed as aforesaid.

THOMAS WHELPLEY,
Deputy Surveyor.

Subscribed and sworn to before me this 16th day of February, A. D. 1856.

C. C. JACKSON,
Notary Public, Wayne Co., Michigan.

List of names and residences of persons who assisted in running, measuring or marking the lines and corners described in the foregoing field-notes of islands in the lower peninsula of Michigan, viz: William A. Hoskins, of Madison, Lake county and State of Ohio, and Harlan Ingersoll and Robert T. Gale, of Delta in the county of

Eaton and State of Michigan, performed the duty of chainmen and marked the corners.

We hereby certify that we assisted Thos. Whelpley, deputy surveyor, in surveying the islands in the foregoing field-notes described, that our names and residences, and the duties that we re-
505 spectively performed are correctly set forth in the foregoing statement, and that the said islands have been in every respect well and faithfully surveyed according to the instructions of the surveyor general.

HARLAN INGERSOLL, *Chainman.*
WILLIAM A. HOSKIN, *Chainman.*
R. T. GALE, *Chainman.*

Subscribed and sworn to by the above-named persons before me at Big Prairie this 22nd day of November, 1856.

THOMAS WHELPLEY,
Deputy Surveyor.

I, Thomas Whelpley of the city and county of Monroe, in the State of Michigan, a deputy surveyor, do solemnly swear that in pursuance of — the surveyor general of the United States for Ohio, Indiana and Michigan, the Hon. Leander Chapman, bearing date the — day of ——, 185–, and in strict conformity to the laws of the United States, I have faithfully and correctly surveyed the islands in the lower peninsula of Michigan in the foregoing — described, and I do further solemnly swear that the foregoing are the true and original field-notes of the survey executed as aforesaid.

THOMAS WHELPLEY,
Deputy Surveyor.

Sworn to and subscribed before me this 7th day of March, 1857.

H. W. PRENTICE,
Justice of the Peace.

I certify that the foregoing is a correct transcript of the original notes of the survey of islands in the lower peninsula of Michigan as described therein.

Surveyor general's office, St. Paul, October 15th, 1859.

C. L. EMERSON,
Surveyor General.

506 Chapter 6.

Four maps from U. S. land office. Defendants' Exhibit B, page 167.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *May* 18, 1888.

I, S. M. Stockslager, Commissioner of the General Land Office, do hereby certify that the annexed photolithographic copies of plats of survey of t'p 7 north, range 12 west, Michigan, are true and literal exemplifications of the official plats thereof on file in this office.

Seal United States General Land Office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

S. M. STOCKSLAGER,
Commissioner of the General Land Office.

NOTE.—Appended to this certificate are four large maps which cannot be reproduced for insertion in this printed record. The court is respectfully requested to inspect the originals in the record.

Chapter 7.

Copy of map of Island No. 5 from office of commissioner of the State land office of the State of Michigan.
Defendants' Exhibit C, page 167. Not reproduced. See original.

Chapter 8.

Skeels' map of banks of Grand river and Islands 3 and 5.
Defendants' Exhibit 4, page 174. Not reproduced. See original.

507 Chapter 9.

Skeels' map of Island No. 5, locating the island (as he states) with reference to present lines.
Defendants' Exhibit 5, page 174. Not reproduced. See original.

Chapter 10.

The Hollister map.
Defendants' Exhibit —, page 372. Not reproduced. See original.

Chapter 11.

Proceedings of common council of the city of Grand Rapids, and in the superior court of Grand Rapids, in relation to the opening of East Fulton street from Waterloo street east to Grand river and assessment-rolls therefor.
Defendants' proofs, pages 372, 374, 376, 380.

Resolution of Common Council Ordering Improvements.

The common council of the city of Grand Rapids on the 13th of August, 1883, passed the following resolutions:

Resolved by the common council of the city of Grand Rapids,

First. That the opening and extension of East Fulton street in the city of Grand Rapids, sixty-six feet wide from the westerly line of Waterloo street west, to low-water mark in the main channel of Grand river, is a necessary public improvement, and that said improvement is for the use and benefit of the public, and that the common council of said city deem it necessary to take private property for the purpose of said opening and extension.

Second. That the said common council deem it necessary to take the following-described pieces or parcels of land in the city of Grand Rapids, for the public use and benefit, to be used for the pur-
508 pose of opening and extending said Fulton street sixty-six feet wide, between the points and for the purposes hereinbefore mentioned, viz: * * *

Here follow a number of descriptions including "fourth parcel; so much of Island Number Five in Grand river, being part of section twenty-five, town seven north of range twelve west, as lies between the center line of East Fulton street produced westerly, and a line parallel therewith and distant 33 feet south therefrom." * * *

Third. The city attorney is hereby directed to institute proceedings in behalf of said city, in the superior court of Grand Rapids, to carry out the object of these resolutions.

Proceedings in Superior Court. Petition by City.

September 8th, 1883, there was filed in the superior court of Grand Rapids the following petition:

STATE OF MICHIGAN:

In the Superior Court of Grand Rapids.

To the superior court of Grand Rapids:

Your petitioner, The City of Grand Rapids, a municipal corporation, by J. W. Ransom, its city attorney, comes into court and files this its petition for the opening and extension of East Fulton street, a public street in said city of Grand Rapids, sixty-six feet wide from the westerly line of Waterloo street west to low-water mark in the main channel of Grand river in the city of Grand Rapids.

And thereupon your petitioner shows:

1. That on the 13th day of August A. D. 1883, the common council of said city of Grand Rapids, in regular, open, public session, passed a resolution by vote of a majority of all the members elect thereto, a copy of which resolution certified by the said clerk of said city, under the seal of said city, to be a true and correct copy thereof,
is hereto annexed and made a part of this petition, and
509 marked Exhibit A. And this petition is filed pursuant to the instructions in said resolution, and as commencement of judicial proceedings in pursuance of act number 124 of the Session Laws of the Legislature of the State of Michigan, approved May 31st, 1883, entitled, "An act to authorize cities and villages to take private *private* property for the use or benefit of the public, and to repeal act number 26 of the Public Acts of 1882," and to acquire private property for the use and benefit of the public for just compensation, for the purpose of making the public improvement hereinbefore and in said resolution described, to be used therefor.

2. That the different parcels of real estate, being lots, tracts and private property in said city of Grand Rapids, proposed to be taken for the said opening and extension of said street, as described in

said resolution, together with the names of occupants, owners and others interested in said lots, tracts and parcels, respectively, as far as the same can be ascertained, are stated below, viz:

(The petition immediately following this statement is divided into three columns, headed respectively as follows:

1st column: Descriptions of the several parcels of land, private property supposed to be taken.

2d column: Name of owner.

3d column: Name of occupant, mortgagee, or other party holding entries, with statement of interest.)

* * * * * * *

Fourth parcel: So much of Island No. 5 in Grand River—being part of section twenty-five, town seven north of range twelve west, as lies between the center line of East Fulton street produced westerly, and a line parallel therewith and distant 33 feet south therefrom.

Name of owner: Grand Rapids & Indiana Railroad Company claims to be owner of fourth parcel. (Third column opposite this description is left blank.)

3. That it is necessary to take the said property described
510 in the second clause of this petition for the public use and benefit. That the opening and extension of said East Fulton street, in the city of Grand Rapids, from the westerly line of Waterloo street to low-water mark in the main channel of Grand river, in said city of Grand Rapids, said opening and extension being sixty-six feet wide—is a necessary public improvement. That for the purpose of making said public improvement it is necessary to take and use the various parcels of land described above.

4. That the common council of said city of Grand Rapids has caused the said property to be taken to be surveyed, and has caused a map and plan of said property so proposed to be taken, certified to be correct by the city surveyor of said city, to wit, Homer A. Collar—he being the surveyor making the same—to be prepared for use on the trial, a copy of which map and plan is hereto attached, marked Exhibit B, and made a part of this description.

5. Therefore, your petitioner, The City of Grand Rapids, prays that a jury may be summoned and empaneled to ascertain and determine whether there is necessity for taking for the use and benefit of the public, the private property described in the second clause of this petition, for the purpose of making such public improvement and to ascertain, determine and award the just compensation to be made therefor, and to whom the same shall be paid.

And your petitioner further prays that upon the filing hereof, a summons do issue to the respondents above named, and all other persons interested, stating briefly the object of said petition, and commanding them to appear at a time and place to be named.

The names of said respondents and others interested, so far as the same can be ascertained, are as follows:

511 * * * * * * *

The Grand Rapids & Indiana Railroad Company,
JAMES W. RANSOM,
City Attorney.

Sworn to by Mr. Ransom, September 8th, 1883, before a notary.

Annexed to this petition was a copy of the resolution of the common council of August 13th.

Proceedings in Superior Court, January 22d, 1884; *Journal* 5, *page* 297.
Title of Proceedings.

In the proceedings, as shown by this entry were the empaneling of a jury of twelve qualified freeholders, selected, drawn and sworn by the sheriff of Kent county, viz: Charles E. Olney, David Miller, Charles D. Lyon, George H. Outhouse, Francis Letellier, Newton T. Smith, Don J. Leathers, Elias Matter, Julius Gatt, Cyrus E. Perkins, W. C. Denison, S. M. Pearsall, the swearing in of this jury, hearing of proofs and allegations by the jury, view of the premises by the jury, and adjournment of the proceedings until the next day.

Proceedings in Superior Court, January 23d, 1884; *Journal* 5, *page* 300.
Title of Proceeding.

This entry shows that the proofs and allegations were concluded, the matter argued by counsel, that instructions were given by the court, that the jury retired and after deliberation returned into court and rendered their written verdict and finding, and that the same was ordered to be filed.

Verdict of Jury.

STATE OF MICHIGAN:

In the Superior Court of Grand Rapids.

512 In the matter of the opening and extension of East Fulton street, in the city of Grand Rapids, 66 feet wide, from the westerly line of Waterloo street west to low-water mark in Grand river.

Report and Verdict of the Jury.

Part I.

We, the undersigned, the jury empaneled in this matter, find that it is necessary to take and use the private property described in the petition in this cause for the public use and benefit as a public street to be used for the purpose of opening and extending said East Fulton street 66 feet wide from the westerly line of Waterloo street west to low-water mark in Grand river.

Part II.

And the just compensation to be paid for such private property, and to whom payable, we hereby determine to be as follows, to wit:

(First column.) Description of each of the several parcels of private property to be taken.

* * * * * * *

Fourth parcel. So much of Island No. 5 in Grand river—being part of section twenty-five, town seven north of range twelve west, as lies between the center line of East Fulton street produced westerly, and a line parallel therewith and distant 33 feet south therefrom.

(Second column.) Owners, occupants and others interested in each parcel.

The Grand Rapids & Indiana Railroad Company.

(Third column.) Compensation and damages.

$25.00.

(Fourth column.) To whom payable.

Grand Rapids & Indiana Railroad Company.

513 And we, the said jury, after instruction from the court, do further find and determine, that it is necessary to take and use said private property described in said petition and above herein described, for the public use and benefit, to be used for the purpose of the opening and extension of said East Fulton street, as above stated; that we have awarded to each of the owners of said property what we deem to be a just sum as compensation for the taking and using said property, and which is hereinbefore stated, and in cases where such private property was found subject to a valid mortgage, lease, agreement or other lien, estate or interest, we have apportioned and awarded to the parties in interest such portion of the compensation as we deem just; that the total amount of said compensation found by us is the sum of nine thousand eight hundred and six dollars ($9,806), the whole of which is apportioned above; and we have awarded to each owner of said property, or any interest therein, so to be taken for his damages and compensation, the sums stated above.

All of which matters above are hereby rendered as the verdict of this jury, and which is brought into court, and given this twenty-third day of January, A. D. 1884, and is signed by each member of the jury.

1. Charles E. Olney,
2. David Miller,
3. Charles D. Lyon,
4. George H. Outhouse,
5. Francis Letellier,
6. Newton T. Smith,
7. Don J. Leathers,
8. Elias Matter,
9. Julius Gatt,
10. Cyrus E. Perkins,
11. W. C. Denison,
12. S. M. Pearsall,

Jurors.

Proceedings in Superior Court, January 29th, 1884; *Journal 5, page 310. Title of Proceedings.*

514 The jury having rendered their verdict, and more than two days in turn having elapsed, and no motion for a new trial or in arrest of proceedings having been made,

It is ordered that the report and verdict of the jury be, and the same is, in all things ratified and confirmed.

Resolution by Common Council Directing Assessment, January 5, 1885.

The resolution recited anterior proceedings, viz: Determination by council that the improvement was necessary; the proceedings and verdict of jury in superior court; that $20 had been received by sale of building on property taken.

It is therefore ordered that the following portion of said city in the vicinity of said improvement is deemed to be benefited thereby and proper to be assessed for the sum of $9,786 of such compensation awarded as aforesaid, and such assessment is hereby ordered thereon, viz: (Then follows description of territory including Island 5 and lots 5, 6, 7, 8, 9 and 13 in Bryan and Ball's subdivision.)

And that the board of review and equalization of the city of Grand Rapids, who by the charter of said city are constituted commissioners for that purpose, be and they are hereby directed to make such assessment upon all the owners of lands within the district aforesaid, in proportion as nearly as may be, to the advantage which each shall be deemed to acquire by the making of such public improvement.

Assessment-roll.

Assessment-roll for compensation awarded by jury for property taken to open and extend East Fulton street from the westerly line of Waterloo street to low-water mark in the main channel of Grand river, in the city of Grand Rapids.

515

Name of owner or occupant.	*Description.*	*Value.*	*Assessment.*
147 pages of descriptions, with names, values and assessments.			
Page 73.			
John Butler	Lot five (5) on plat of Bryan-Ball's subdivision of the village of Kent	$2,000	$20
John Butler	Lot 6, same	1,600	20
John Butler	Lot 7, same	1,000	20
John Butler	Lot 8, same	1,600	20
Page 74.			
John Butler	Lot 9, same	1,600	20
John Butler	N. ½ lot 13, same	200	10
Page 103.			
Grand Rapids and Indiana Railroad Co.	Island number five (5) in Grand river, on section number twenty-five (25), town. (7) north, of range twelve (12) west, in the city of Grand Rapids, Michigan	2,000	850
Total assessment			$9,786 00

Annexed to the assessment-roll are:

1. Resolution of common council directing the assessment.
2. Map of the district.
3. Certificate of members of the board of review and equalization, dated June 8th, 1885, that the assessments had been made by them

upon the lands defined by the common council as directed by the council, and that they had entered upon the roll the names of owners or occupants of the several lots and parcels.

The roll was filed in the office of the city clerk June 8th, 1885.

There was also annexed to the roll a notice by the city clerk to John Butler, the Grand Rapids & Indiana Railroad Company, and many others named in the roll, (also named in the notice) that the assessment-roll had been and was then on file, and that the persons named appear before the common council June 15th, 1885, and show cause, if any, why the assessment should not be made and collected, with proof of publication of the same in the Grand
516 Rapids Daily Times. There was no proof of service of said notice except by said publication.

June 22d, 1885, the assessment-roll was ratified and confirmed by the common council.

Collector's Roll.

There was also produced the collector's roll, which was a copy of the original assessment-roll, duly certified by the clerk.

The said collector's roll had been duly returned to the city clerk with memorandum thereon, showing that the assessments against John Butler had been paid. Also that the assessment against the Grand Rapids & Indiana Railroad Company on Island number five had been paid.

(NOTE.—A copy of the map annexed to the assessment-roll is in the original case. It cannot be duplicated for this printed record and reference to the original is prayed.)

Chapter 12.

Receipts to G. R. & I. R. R. Co. for taxes and other charges against Island 5, from 1874 to 1889.

Defendant's Proofs, pages 376–379.

Taxes of 1874.

$15.54. 1ST WARD COLLECTOR'S OFFICE,
CITY OF GRAND RAPIDS, *March* 19, 1875.

Received of Grand Rapids & I. R. R. Co. the sum stated below for taxes assessed upon the following-described tracts of land, in said ward, for the year 1874.

Description, Island No. 5, 300; State tax, 1.20; county tax, 1.92; city tax, 7.26; highway tax, .48; school tax, 3.72; interest on railroad bonds, .96.

Recapitulation.

R. R.	$ 96
School tax	3 72
Highway tax	48
517 City tax	7 26
County tax	1 92
State tax	1 20
Total	$15 54

PATRICK GRADY, *Collector.*

Taxes of 1875.

$25.90. 1st Ward Collector's Office,
City of Grand Rapids, *Jan'y* 8, 1876.

Received of Wm. A. Howard, land com. G. R. & I. R. R. Co., the sum stated below for taxes assessed upon the following-described tracts of land, in said ward, for the year 1875.

Description, Island No. 5. State tax, .99; county tax, 3.10; city tax, 15.14; highway tax, .71; school tax, 5.68; rejected tax, .25; poor tax, .03.

Recapitulation.

Poor	$ 03
Rejected	25
School tax	5 68
Highway tax	71
City tax	15 14
County tax	3 10
State tax	99
Total	$25 90

JAMES SHIELDS, *Collector.*

Taxes of 1876.

First Ward Collector's Office,
Grand Rapids, Mich., *March* 13, 1877.

Received of G. R. & I. R. R. Co. the sums stated below for taxes assessed upon the following-described tract of land in said ward for the year 1876.

518 Description, Island Number Five in Grand river; State tax, 1.96; county tax, 4.05; city tax, 16.96; highway tax, 1.02; school tax, 8.20; sewer tax, .32; poor tax, .07.

Recapitulation.

Poor	$ 07
Sewer	32
School	8 20
Highway	1 02
City	16 96
County	4 05
State	1 96
Total	$32 58
Col. fees	1 30
	33 88

JAMES SHIELDS, *Collector.*

Taxes of 1877.

FIRST WARD COLLECTOR'S OFFICE,
GRAND RAPIDS, MICH., *March 26th*, 1878.

Received of G. R. & I. Company the sum stated below for taxes assessed upon the following-described tract of land or personal property, in said ward, for the year 1877.

Description, Island No. 5 in Grand river; State tax, 3.40; county tax, 5.80; city tax, 17.60; highway tax, 1.60; school tax, 7.50.

Recapitulation.

School	$7 50
Highway	1 60
City	17 60
County	5 80
State	3 40
Total	35 90
Fees	1 44
	$37 34

JAMES SHIELDS, *Collector.*

519 *Taxes of* 1878.

FIRST WARD COLLECTOR'S OFFICE,
CITY OF GRAND RAPIDS, *March* 18, 1879.

Received of Grand Rapids & Indiana Railroad Company the sum stated below for taxes assessed upon the following described tracts of land, in said ward, for the year 1878.

Description, Island Number Five (5) in Grand River, 1,000; State tax, 2.60; county tax, 5.70; city tax, 17.20; high'y tax, 1.52; school tax, 8.30.

Recapitulation.

School tax	$8 30
Highway tax	1 52
City tax	17 20
County tax	5 70
State tax	2 60
Collection	1 41
	$36 73

BEREND DE GRAAF, *Collector.*

Taxes of 1879.

FIRST WARD COLLECTOR'S OFFICE,
GRAND RAPIDS, MICH., *March* 19, 1880.

Received of Grand Rapids & Indiana Railroad Co. the sum stated below, for taxes assessed upon the following described tract of land or personal property in said ward for the year 1879.

Description, Island Number 5 in Grand river; State tax, 3.50; county tax, 6.10; city tax, 19.40; highway tax, 1.50; school tax, 8.40; sewer tax, .40.

Recapitulation.

Sewer	$	40
School	8	40
Highway	1	50
City	19	40
520 County	6	10
State	3	50
Total	39	30
	1	57
	$40	87

CORNELIUS SONKE, *Collector.*

Taxes of 1880.

FIRST WARD COLLECTOR'S OFFICE,
CITY OF GRAND RAPIDS, *March* 19, 1881.

Received of Grand Rapids & Indiana R. R. the sum stated below for taxes assessed upon the following described tracts of land, in said ward, for the year 1880.

Description, Island Number Five in Grand river; State tax, 2.30; co'ty tax, 5.20; city tax, 17.60; high'y tax, 1.80; school tax, 8.20.

Recapitulation.

School tax	$8 20
Highway tax	1 80
City tax	17 60
County tax	5 20
State tax	2 30
Collection	1 40
	$36 50

BEREND DE GRAAF, *Collector.*

Taxes of 1881.

FIRST WARD COLLECTOR'S OFFICE,
CITY OF GRAND RAPIDS, *June* 21, 1882.

Received of Grand Rapids & Ind. R. R. Co. (G. W. Cass, trustee) the sum stated below for taxes assessed upon the following described tracts of land, in said ward, for the year 1881.

Description, Island No. 5 in Grand river; valuation, 1,000; State tax, 2.70; county tax, 4.90; city tax, 20.50; highw'y tax,
521 2.20; school tax, 8.40; total $38 70
(4 per cent., $1.54) 40 24

PETER OTTE, *Collector.*

Taxes of 1882.

FIRST WARD COLLECTOR'S OFFICE,
CITY OF GRAND RAPIDS, *Jan. 11th*, 1883.

Received of Grand Rapids & Indiana R. R. Co. the sum stated below for taxes assessed upon the following-described tracts of land, in said ward, for the year 1882.

Description, Island No. 5 in Grand river; valuation, 2,000; State tax, 2.20; county tax, 4.80; city tax, 21.80; high'y tax, 2.40; school tax, 10.60; total..... ..... 41 80

MANNY J. LEWIS, *Collector.*

Taxes of 1883.

FIRST WARD COLLECTOR'S OFFICE,
CITY OF GRAND RAPIDS, *Feb.* 20, 1884.

Received of Grand Rapids & Indiana Railroad Company the sum stated below for taxes assessed upon the following-described tracts of land, in said ward, for the year 1883.

Description, Island Number 5 in Grand river; valuation, 2,000; State tax, 3.32; county tax, 4.80; city tax, 21.60; high'y tax, 2.68; school tax, 11.20; total..... ..... $43 60
4 per cent. col..... 1 74

$45 34

MANNY J. LEWIS, *Collector.*

Taxes of 1884.

FIRST WARD COLLECTOR'S OFFICE,
CITY OF GRAND RAPIDS, MICH., *Feb.* 28, 1885.

Received of Grand Rapids & Indiana Railroad Co. the sum stated below for taxes assessed upon the following-described tracts of land, in said ward, for the year 1884.

Description, Island Number 5 in Grand river; valuation, 2,000; State tax, 2.20; county tax, 2.60; city tax, 21.80; high'y
522 tax, 3.20; school tax, 13.20; total..... $43 00
Coll's fees..... ..... 1 72

$44 72

GYSBERT W. VAN DOMMELON, *Collector.*

Taxes of 1885.

FIRST WARD COLLECTOR'S OFFICE,
CITY OF GRAND RAPIDS, *Feb.* 3, 1886.

Received of Grand Rapids & Indiana Railroad Co. the sum stated below for taxes assessed upon the following-described tracts of land, in said ward, for the year 1885.

Description, Island No. 5 in Grand river; valuation, 2,000; State tax, 3.80; county tax, 3.40; city tax, 30.20; high'y tax, 2.80; school tax, 12.20; total..... $52 40
Per c..... 2 09

$54 49

Received payment,

HENRY HOEKSEMA, *Collector.*

Taxes of 1886.

FIRST WARD COLLECTOR'S OFICE,
CITY OF GRAND RAPIDS, MICH., *Jan.* 26, 1887.

Received of Grand Rapids & Indiana Railroad Co. the sum stated below for taxes assessed upon the following-described tracts of land, in said ward, in the year 1886.

Description, Island No. 5 in Grand River; valuation, 2,000; State tax, 3.00; county tax, 4.40; city tax, 20.00; highway tax, 1.80; school tax, 13.20; total..... $42 40
Fees..... 1 68

Total..... $44 08

Acres, 2.52. Valuation, $2,000.

HENRY HOEKSEMA, *Collector.*

523 *Taxes of* 1887.

FIRST WARD COLLECTOR'S OFFICE,
CITY OF GRAND RAPIDS, *Feb.* 11, 1888.

Received of Grand Rapids & Indiana Railroad Co. the sum stated below for taxes upon the following-described tracts of land, in said ward, for the year 1887.

Description, Island No. 5 in Grand river; valuation, 2,000; State tax, 5.00; county tax, 6.20; city tax, 25.60; high'y tax, 1.80; school tax, 16.40; total..... $55 00
2 20

$57 20

HENRY HOEKSEMA, *Collector.*

Taxes of 1888.

FIRST WARD COLLECTOR'S OFFICE,
CITY OF GRAND RAPIDS, *Feb. 20th,* 1889.

Received of Grand Rapids & Indiana R. R. Co. the sum stated below for taxes assessed upon the following-described tracts of land, in said ward, for the year 1888.

Description, Island No. 5 in Grand river, 2.52 acres; valuation, 2,000; State tax, 3.96; county tax, 4.18; city tax, 29.48; high'y tax, 1.98; school tax, 18.70; total..... $58 30
2 33

$60 63

HENRY HOEKSEMA,
Collector, 78 *Grandville Ave.*

Taxes of 1889.

FIRST WARD COLLECTOR'S OFFICE,
GRAND RAPIDS, MICH., *Feb.* 28, 1890.

No. 1197, page 64.

Received of Grand Rapids & Indiana Railroad Company the sum stated below for taxes assessed upon the following-described tracts of land, in said ward, for the year 1889.

524 Description, Island No. 5, in Grand river; valuation, 2,200; State tax, 5.06; county tax, 3.52; city tax, 34.10; highway tax, 2.20; school tax, 18.70; total..... $63 58
Fees..... 2 54

$66 12

M. C. DE JAGER, *Collector.*

Sidewalk Tax, 1885.

MARSHAL'S OFFICE,
GRAND RAPIDS, *July* 30, 1885.

G. R. & I. R. R. Co. to Thos. Nester, city marshal, Dr.

Building 150 ft. walk on East Fulton street in front of Island No. 5.

2,400 ft. 2 x 10—16..... $26 40
600 ft. 4 x 4—16..... 6 60
Labor..... 6 00
Spikes..... 1 80

Building railing, lawn.

10 pc. 4 x 4—16..... 2 83
9 pc. 4 x 4—12..... 1 73
19 pc. 1 x 6—16..... 2 13
Nails..... 35
Labor..... 5 50

$53 34

Special Tax for Opening Fulton Street.

MARSHAL'S OFFICE,
GRAND RAPIDS, MICH., *August* 5, 1885.

Received of Grand Rapids & Ind. R. R. Co. the sum stated below, that being the amount of assessment assessed upon the following-described premises, in the assessment-roll for opening and extending East Fulton street to — street, including the construction of the necessary culverts.

525 Description of premises: Island Number Five (5) in Grand river, on section number twenty-five (25), town. seven (7) north, of range twelve (12) west, in the city of Grand Rapids, Michigan.

Amount of tax	$850 00
4 per cent	34 00
Total	$884 00

THOS. NESTER,
City Marshal,
Per A. DOHERTY.

For Grading Waterloo Street.

GRAND RAPIDS, MICH., *June 8th*, 1886.

Received of G. R. & I. R. R. Co. the sum stated below, that being the amount of assessment assessed upon the following-described premises, in the assessment-roll for the grading of Waterloo street from East Fulton street to Cherry street, including the construction of the necessary culverts.

Description of premises: All that part of Island No. 5 in Grand river, on sec. 25, T. 7, N. R. 12 west, in the city of Grand Rapids, which lies south of the center line of East Fulton St, said island containing 2.56 acres, excepting therefrom all public streets and alleys.

Amount of tax, $55.00.

ARTHUR MEIGS,
City Treasurer,
By HOMER W. NASH, *Dep'y.*

Chapter 13.

Certificate of governor of Michigan of completion of the Grand Rapids & Indiana railroad from the State line to Bridge street in the city of Grand Rapids.

STATE OF MICHIGAN, EXECUTIVE OFFICE,
LANSING, *September* 2, 1872.

To the honorable the Secretary of the Interior, Washington, D. C.:

526 Whereas, by an act of Congress entitled, "An act making a grant of alternate sections of the public lands to the State of

Michigan to aid in the construction of certain railroads in said State and for other purposes," approved June 3d, 1856, lands were granted to the State of Michigan to aid in the construction of a railroad from Grand Rapids to some point on or near Traverse bay, which grant was renewed and extended by an act of Congress approved March 3, 1865, entitled, "An act to amend an act entitled an act to amend an act entitled an act making a grant of alternate sections of public land to the State of Michigan, to aid in the construction of certain railroads in the said State, and for other purposes;" and

Whereas, by an act of the legislature of the State of Michigan, approved February 14, 1857, entitled, "An act disposing of certain grants of land, made to the State of Michigan for railroad purposes by an act of Congress approved June 3, 1856," so much of the lands as were granted by said act of Congress, to aid in the construction of a railroad from Grand Rapids to some point on or near Traverse bay, were conferred upon the Grand Rapids & Indiana Railroad Company.

Now, therefore, I, Henry P. Baldwin, governor of the *the* State of Michigan, do hereby certify that the Grand Rapids & Indiana Railroad Company has constructed and completed in a good and substantial manner, as a first-class railroad, eighty-seven and one-tenth (87.1) additional and continuous miles of railroad, constituting the second and third divisions of the railroad of said company, commencing at the south line of the State of Michigan, in the town of Sturgis, (township eight (8) south, of range ten (10) west), and extending northwesterly to the point in the village of Kalamazoo, where said railroad crosses the Michigan Central railroad, in township two (2) south, of range eleven (11) west, constituting to
527 this point the second division of said railroad having a length of thirty-eight and one-tenth (38.1) miles; thence extending forty-nine miles, and constituting the third division of said railroad, to and terminating at Bridge street in the city of Grand Rapids in said State.

In testimony whereof, I have made and executed this
[SEAL.] certificate and caused the great seal of the State of Michigan to be hereunto affixed this second day of September in the year of our Lord one thousand eight hundred and seventy-two.

HENRY P. BALDWIN.

By the governor:
G. M. HASTY,
Dep. Sec. of State.

Chapter 14.

This is a copy of section of city map of 1884. It cannot be reproduced for this printed record; and reference to the record is prayed.

528 V.—*Final Decree.*

STATE OF MICHIGAN:

The Circuit Court for the County of Kent, In Chancery.

At a session of said court, held at the court-house in the city of Grand Rapids, in said county, on the fourteenth day of May, A. D. 1890.

Present: Honorable William E. Grove, circuit judge.

JOHN BUTLER, Complainant,
vs.
GRAND RAPIDS AND INDIANA RAILROAD COMPANY, CONTINENTAL Improvement Company, William H. Barnes, and The Philadelphia Trust, Safe Deposit and Insurance Company, Defendants.

This cause came on to be heard on the pleadings and proofs taken in open court, Messrs. Butterfield and Keeney appearing for the complainant and James H. Campbell, Esq., and T. J. O'Brien, Esq., for the defendants, and was argued by counsel, and after mature deliberation thereon, the court doth order, adjudge and decree as follows:

1. That the complainant is and at the time of the commencement of this suit was the owner in fee-simple of certain premises situate in the city of Grand Rapids, Kent county, Michigan, and particularly described as follows: Commencing at the point of intersection of the northerly line of lot five of Bryan and Ball's subdivision plat of the village of Kent, now part of the city of Grand Rapids aforesaid, with the westerly line of Waterloo street in said city;

529 thence in a westerly direction on a line drawn at right angles with said Waterloo street to the center of Grand river as it now runs; thence in a southerly direction along the center line of said river to the point of intersection of said center line of Grand river with a line drawn from the southeasterly corner of lot nine of Bryan and Ball's subdivision plat aforesaid, at right angles with said westerly line of Waterloo street to the center line of Grand river as it now runs; thence in an easterly direction on said line drawn at right angles with said Waterloo street to the westerly line of Waterloo street at the southeasterly corner of said lot nine; thence in a northerly direction along the westerly line of Waterloo street to the place of beginning; which premises constitute lots five, six, seven, eight and nine of Bryan and Ball's subdivision plat of the village of Kent, now part of the city of Grand Rapids aforesaid.

Also commencing at a point of intersection of the northerly line of lot thirteen of Bryan and Ball's subdivision plat aforesaid with the westerly line of said Waterloo street; thence in a westerly direction on a line drawn at right angles with said westerly line of Waterloo street to the center of Grand river as it now runs; thence in a southerly direction along the center of said river to the point

of intersection of the center line of said stream with a line commencing on the westerly line of Waterloo street at the center of the front line of said lot, the same being a point twenty-five feet south of the place of beginning and drawn at right angles with said westerly line of Waterloo street and extending in a westerly direction to the center of said stream as it now runs; thence in an easterly direction along the line drawn at right angles with Waterloo street to the westerly line of said street; thence in a northerly direction along the westerly line of Waterloo street twenty-five feet to the place of beginning; which premises constitute the
530 north half of lot thirteen of Bryan and Ball's subdivision plat aforesaid; that the title of complainant to the lands above described is in the direct chain of title from the Government of the United States and that he is and at the time of the commencement of this suit was in the actual and peaceable possession and occupation of said premises.

2. That a certain patent heretofore issued by the Commissioner of the United States Land Office to the State of Michigan for the use of the said defendant Grand Rapids & Indiana Railroad Company, bearing date the 28th day of March, 1871, which was recorded on the 9th day of August, 1887, in the office of the register of deeds for said county of Kent, in Liber 183 of Deeds, on page 1, purporting to cover and convey among other lands Island Number Five, so called, in Grand river, by virtue of which the said defendants have claimed title to a portion of the premises described in paragraph one of this decree, conveys no title as against said complainant to any portion of the lands hereinbefore mentioned as owned by him and hereinbefore particularly bounded and described in said paragraph one of this decree, and that in so far as it attempts to convey any such title, said patent was issued without jurisdiction and is void; that the defendants in this suit be and they are hereby ordered and directed within sixty days from this date to release of record by conveyance, or conveyances, in proper form, all claim or right of title in or to the premises owned by complainant as aforesaid and particularly bounded and described in said paragraph number one of this decree or in or to any portion thereof; and in default of the execution by said defendants of such conveyance or conveyances, it is ordered and decreed that said complainant do have leave to record in the office of the register of deeds of said county of Kent a duly certified copy of the decree of this court in this suit, and that when so recorded it shall
531 have the same force and effect as if such conveyance or conveyances had been so executed, acknowledged, delivered and recorded.

3. That an injunction do issue out of and under the seal of this court directed to the said defendants Grand Rapids & Indiana Railroad Company and Continental Improvement Company, and to each of their officers, agents, servants, attorneys and employés, therein and thereby commanding them and each of them permanently and absolutely to desist and refrain from selling, conveying or contracting to sell or convey the premises hereinbefore and in

paragraph number one of this decree particularly bounded and described or any part thereof, and from asserting any title thereto and from interfering therewith in any way.

4. That said complainant do recover against said defendants his costs of suit to be taxed.

WILLIAM E. GROVE,
Circuit Judge.

VI.—*Appeal.*

The defendants duly filed with the register of the circuit court in chancery a written claim of appeal to the supreme court from the above decree and filed the bond required by the statute.

532 STATE OF MICHIGAN:

The Circuit Court for the County of Kent. In Chancery.

JOHN BUTLER, Complainant,
vs.
THE GRAND RAPIDS & INDIANA RAILROAD COMPANY, Defendant.

I, Cornelius L. Harvey, register of the circuit court for the county of Kent, in chancery, do hereby certify that the foregoing attached papers are the original bill, and all process, pleadings, motions, notices, orders, and decrees which have been filed in the above-entitled cause and the whole thereof, and also copies of all journal and calender entries and other proceedings of record in said cause not embraced in the original papers hereinbefore mentioned; that I have compared the papers purporting to be copies with the originals now of record in my office and the same are true and correct copies of such original and of the whole thereof.

In witness whereof I have hereunto set my hand and caused the seal of said court to be affixed, at the city of Grand Rapids, in said county, this 23d day of September, A. D. 1890.

[SEAL.] CORNELIUS L. HARVEY, *Register.*

533 STATE OF MICHIGAN:

Supreme Court.

JOHN BUTLER, Complainant and Appellee,
vs.
GRAND RAPIDS AND INDIANA RAILROAD COMPANY, CONTINENTAL Improvement Company, William H. Barnes, and Philadelphia Trust, Safe Deposit and Insurance Company, Defendants and Appellants.

COUNTY OF KENT, *ss:*

Roger W. Butterfield, being duly sworn, says that he has read a copy of an affidavit of James H. Campbell this day served in said cause.

That the matter of the settlement of the case, so far as complain-

ant was concerned, was in the hands of deponent's partner, Mr. Keeney, and, so far as deponent recollects, this deponent himself had no conversation with Mr. Campbell or any one else acting in defendants' behalf about the settlement of the case, except on one occasion, which was during the absence of Mr. Keeney from the State, which was between the latter part of July and the 20th of August, 1890; that this is the occasion on which deponent suggested and supposed it to be understood that blue prints of certain of said plats, as mentioned in deponent's former affidavit, be made; that the next deponent know about the matter was when he heard that defendants' counsel had procured the case to be signed by the circuit judge in Mr. Keeney's absence and without notice either to him or to this deponent.

534 And deponent further says that there is an entire mistake and misapprehension on the part of defendants' counsel when he states that there was an agreement that the maps should not be printed and that a bound volume of such maps was shown to deponent, nor is it the fact that deponent at any time expressed satisfaction with such arrangement; deponent's recollection is very clear upon this point from the very fact that the first deponent ever knew of the binding of said maps in a separate volume was when he was apprised of that fact by the statement of Mr. Campbell in his affidavit this day served.

And deponent says that he had little or nothing to do with the settlement of such case; that he never waived or intended to waive the right of complainant to require the printing of the record in the usual way or said anything which was open to that construction beyond the fact that it was suggested that not all of the city map need be printed, but only the portions adjacent to the premises in dispute, and deponent says that no such interviews were ever had with him as those mentioned in Mr. Campbell's affidavit as occurring on or about September 25th and September 20th last, and that it is an entire mistake on the part of counsel to connect this deponent with the making of any such arrangements as are therein set forth.

And further deponent says not.

ROGER W. BUTTERFIELD.

Subscribed and sworn to before me this 5th day of January, A. D. 1891.

MARY B. CAMPBELL,
Notary Public in and for Kent County, Michigan.

(Endorsed:) Filed Jan'y 6, 1891. Chas. C. Hopkins, clerk supreme court. 11552.

535 STATE OF MICHIGAN:

Supreme Court.

JOHN BUTLER, Complainant,
vs.
GRAND RAPIDS AND INDIANA RAILROAD COMPANY, CONTINENTAL Improvement Company, William H. Barnes, and Philadelphia Trust, Safe Deposit and Insurance Company, Defendants and Appellants.

And now comes the said appel-ee and moves the court now here that the appellants be directed to print with the record in this cause the following maps or plats, viz., one, plat from U. S. land office dated July 7, 1831; two, plat from U. S. land office dated February 2, 1832; third, plat from U. S. land office dated April 30, 1838; fourth, plat from U. S. land office dated July 24, 1856, all of the above being plats of lands in township seven north, of range twelve, in the State of Michigan; five, plat of Bryan & Ball's subdivision; six, map of those portions of the city of Grand Rapids immediately adjacent to the premises in controversy in this cause, for the reason that it is necessary that such maps or plats be printed in order to a proper presentation of said cause in this court, and, further, that there be stricken from the brief filed by appellants in this cause the map printed therewith, for the reason that the same is not a correct map of the lands in suit and is not based upon the evidence in said cause and is not a part of the record herein. This motion is based upon the files and records in this cause and also upon the
536 affidavits of Willard F. Keeney and Roger W. Butterfield, this day filed herein.

Dated Grand Rapids, December 30, 1890.

BUTTERFIELD & KEENEY,
Solicitors for Appellee.

537 STATE OF MICHIGAN:

Supreme Court.

JOHN BUTLER, Complainant,
vs.
GRAND RAPIDS AND INDIANA RAILROAD COMPANY, CONTINENTAL Improvement Company, William H. Barnes, and Philadelphia Trust, Safe Deposit and Insurance Company, Defendants and Appellants.

COUNTY OF KENT, *ss:*

Willard F. Keeney, of the city of Grand Rapids, in said county, being duly sworn, deposes and says that he is one of the solicitors for the complainant in the above-entitled cause and makes this affidavit in his behalf and is properly authorized so to do.

That upon the hearing of the above-entitled cause in the court below there were introduced in evidence certain maps, among which were the following maps or photolithographic plats which were

offered in evidence by defendants' counsel, viz., one copy of plat dated July 7, 1831; one copy of a plat dated February 2, 1832; one copy of a plat dated April 30, 1838; one copy of a plat dated July 24, 1856, all in township seven north, of range twelve west, in the State of Michigan, all of which were copies from the United States land office; that such maps or plats have not been printed with the record in this cause, nor have blue prints or other copies thereof been made and annexed to the printed record herein.

That upon the hearing of said cause there were also introduced in evidence a plat of Bryan & Ball's subdivision and a map of the city of Grand Rapids as made by Collar and Greiner, surveyors
538 and civil engineers; that the same have not been printed with the record in this cause, nor have blue prints or other copies thereof been made and annexed to the printed record herein.

Deponent further says that in order to a correct understanding of the issues involved in this cause it will be necessary in the consideration thereof to make frequent reference to the above maps or plats, and that if the same be not printed or blue prints or other appropriate copies thereof made the counsel and members of the court will be greatly embarrassed and hindered in the argument of the cause, and the court will also be embarrassed and hindered in the consideration of the cause after the argument thereof, and it will be difficult to obtain a clear conception of the precise facts upon which the case turns; that said cause is an important one, and the expense of causing blue prints of the above-mentioned maps or plats to be made will be small, as deponent verily believes that in case it be deemed unadvisable to cause blue prints to be made of the entire of said city map prints can be made at small expense of those portions immediately adjacent to the premises in controversy in this suit; that a map of such portions of the city is necessary in order to give the court a correct understanding of much of the testimony given at the hearing; that upon the settlement of the case this deponent supposed it to be understood that the maps or plats above specified would be printed or blue prints or other appropriate copies made for use of the court and counsel at the hearing.

Deponent further says that the necessity of laying be forethe court correct maps and plats of the premises in controversy is enhanced by the following circumstances: Defendants' counsel have caused to be prijted and served an alleged map of the lands in suit, which
539 is no copy of any map introduced or referred to upon the hearing of this cause below, but it is a map which has been devised by defendant's counsel since the submission of this cause; that said map is incorrect and erroneous in important particulars and is not based upon the evidence given in said cause, as deponent verily believes.

And this deponent believes that in justice to the complainant this cause should be considered in this court upon the facts as given in evidence in the court below and upon the maps and plats there introduced rather than upon a map devised by counsel for defendants which is not borne out by the evidence and which has no proper place in the consideration of the cause.

Deponent further says that almost immediately upon receiving a copy of the record and brief in this cause and on or about the 13th day of December, 1890, he applied to James H. Campbell, one of defendants' counsel, and requested that he cause blue prints or other copies to be made of the maps introduced in evidence at the hearing below, as hereinbefore specified, and that he take from the brief in this cause the fictitious map hereinbefore mentioned, and that said Campbell, in behalf of said defendants, refused to comply with either request so made.

And further deponent says not.

WILLARD F. KEENEY.

Subscribed and sworn to before me this 30th day of December, A. D. 1890.

MARY E. CAMPBELL,
Notary Public in and for Kent County, Michigan.

540 STATE OF MICHIGAN:

Supreme Court.

JOHN BUTLER, Complainant,
vs.
GRAND RAPIDS AND INDIANA RAILROAD COMPANY, CONTINENTAL Improvement Company, William H. Barnes, and Philadelphia Trust, Safe Deposit and Insurance Company, Defendants and Appellants.

COUNTY OF KENT, *ss:*

Roger W. Butterfield, of the city of Grand Rapids, in said county, being duly sworn, deposes and says that he is one of the solicitors for the complainant in the above-entitled cause and makes this affidavit in said complainant's behalf and is properly authorized so to do; that about the time of the settlement of the case in the court below this deponent had a talk with James H. Campbell, one of defendants' counsel herein, about the printing of the record, in the course of which said Campbell suggested whether it was practicable to print with the records the maps introduced in evidence; that in reply thereto this deponent suggested that blue prints of said maps be made for use of court and counsel as the most feasible method of laying said maps and plats before the court; that deponent supposed it to be understood that such blue prints would be made for use of court and counsel at the hearing; if not of all the plats, of such as should be argued on; and further deponent says not.

R. W. BUTTERFIELD.

Subscribed and sworn to before me this 30th day of December, A. D. 1890.

MARY B. CAMPBELL,
Notary Public in and for Kent County, Mich.

541 STATE OF MICHIGAN:

In the Supreme Court.

JOHN BUTLER, Complainant,
vs.
THE GRAND RAPIDS AND INDIANA RAILROAD COMPANY *et al.*,
Defendants and Appellants.

Statement of Counsel for Defendants in Answer to Complainant's Motion Relating to Printing the Maps, to be Heard January 6th, 1891.

(1.) We have received from counsel for complainant notice of a motion that this court direct that the maps introduced in evidence be printed with the record for the purposes of the hearing in this court, and also direct that a certain map, being part of defendants' brief for said hearing, be stricken from the brief.

(2.) We cannot believe that the motion relating to the map in the brief is made with any real intention of insisting upon it or that the court will pay any attention to it if counsel should insist upon it, and therefore pass it without discussion.

(3.) So far as the printing of the maps and the record is concerned these maps are before the court. We believe that the court will determine the question upon the inspection of these maps and upon its view of the requirements of the case based upon such inspection, and respectfully submit the matter to the court.

(4.) While we regard the statements in the somewhat voluminous affidavits presented in support of the motion as wholly im-
542 material, we think there are some statements therein which ought not to remain upon the record without further explanation, and herewith submit an affidavit as to what took place between counsel.

Dated January 3, 1891.

T. J. O'BRIEN,
Counsel for Defendant-.

543 STATE OF MICHIGAN:

In the Supreme Court.

JOHN BUTLER, Complainant,
vs.
THE GRAND RAPIDS AND INDIANA RAILROAD COMPANY *et al.*,
Def'ts, Appellants.

COUNTY OF KENT, *ss:*

James H. Campbell, being duly sworn, deposes and says that in the taking of an appeal of this cause he is charged with the duty of having the case set forth the evidence prepared and settled, and also of having the record printed for the hearing in this court; that on the hearing there were introduced in evidence on the trial twelve maps. A list of these will be found on page two of the index to the printed record, following page 489. All these maps are inserted in the case excepting the Hollister map, which is sent up

separately, and all the maps have been bound together in permanent form and constitute part 2nd of the case setting forth the evidence. With four exceptions the maps so used are the same that were introduced; the four other maps were introduced as part of volumes of public records and copies for the purposes of the appeal had to be made.

That the preparation of the case to be signed by the circuit judge, which included a transcript of the stenographer's notes of the trial, and the making of the copies of said maps took some time, and the case was actually filed in the office of the register of the court on the 20th day of September, 1890.

544 That the body of the testimony comprising the stenographer's notes was submitted to complainant's counsel and returned by them with written amendments, nearly all of which were assented to and a few were abandoned; that on or about the 15th day of September, 1890, this deponent took the maps to Mr. Butterfield an- discussed with him the question of having reprints made of them for the record to be printed.

Deponent suggested that if reprints were to be made it should be done before a return to the appeal was made by the register, and deponent further suggested that on account of the large size of the maps and other characteristics it would be more satisfactory to use upon the hearing before the supreme court the maps as used in the evidence upon the trial. Mr. Butterfield suggested that blue prints be made; deponent replied that that would not be practicable; that blue prints were clumsy and unsatisfactory, and finally it was agreed that the maps should not be reprinted, but should be bound in convenient and permanent form for use upon the hearing. Deponent then took them and had them bound as they now appear, and when bound and on the 20th day of September, 1890, submitted the bound volume to Mr. Butterfield, and he expressed his satisfaction with the arrangement. The case, including said maps so bound, was then filed with the register of said circuit court, and he soon after made his return to the supreme court, sending up said maps so bound, and they are now on file with the clerk of the supreme court. Regarding the map inserted in the brief of counsel for defendants, at page 38 of the printed brief, deponent says:

That said map purports to be a representation of the premises as they exist at the present time or at the time — trial. A full explanation of this map and references to the testimony by which

545 the different features of it may be verified are given on pages 38 and 39 of the printed brief. This map was prepared for the purpose of illustrating more particularly the discussion of points following the map on condemnation proceedings and alleged possession and improvements by the complainant. The said map was prepared and inserted by deponent believing that counsel had the right to insert plats or maps to illustrate their argument, being responsible for their correctness. The map does not purport to be a copy of any map introduced in evidence. On the contrary, it is distinctly stated that it is not.

It was prepared in entire good faith, as deponent believes, and as

he took great pains to make it an accurate representation of the present condition and features of the premises in dispute, and in support of its correctness reference is made to the testimony as to the different features on pages 38 and 39.

That the general statements in Mr. Keeney's affidavit that the said map is incorrect and erroneous and fictitious are unwarranted by facts and ought not to have been made.

JAMES H. CAMPBELL.

Subscribed and sworn to before me this 5th day of January, 1891.

WILLIAM C. VANDENBERG,
Notary Public, Kent Co., Mich.

546 At a session of the supreme court of the State of Michigan, held at the supreme court room in the city of Lansing, on the sixth day of January, in the year of our Lord one thousand eight hundred and ninety-one.

Present: The Honorable John W. Champlin, chief justice; Allen B. Morse, John W. McGrath, Charles D. Long, Claudius B. Grant, associate justices.

JOHN BUTLER, Complainant,
vs.
THE GRAND RAPIDS AND INDIANA R. R. Co. *et al.*, Deft's and App'l'ts.

In this cause a motion is made for an order requiring the appellants to print certain maps used as exhibits in the cause; and the same coming on to be heard is argued by Mr. Keeney for the motion and by Mr. Campbell in opposition thereto, and, due consideration thereof being had, ordered that the appellants print the maps named in the petition and have the same ready when the case is called for hearing.

STATE OF MICHIGAN, *ss:*

I, Charles C. Hopkins, clerk of the supreme court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court, at Lansing, this — day of ——, in the year of our Lord one thousand eight hundred and ninety.

—— ——, *Clerk.*

547 At a session of the supreme court of the State of Michigan, held at the supreme court room, in the city of Lansing, on the 25th day of February, in the year of our Lord one thousand eight hundred and ninety-one.

Present: The Honorable John W. Champlin, chief justice; Allen B. Morse, John W. McGrath, Charles D. Long, Claudius B. Grant, associate justices.

JOHN BUTLER, Complainant,
vs.
THE GRAND RAPIDS AND INDIANA R. R. Co. *et al.* Deft's and App'l'ts.

This cause, coming on to be heard, is argued by counsel in part.

548 At a session of the supreme court of the State of Michigan held at the supreme court room in the city of Lansing on the 26th day of February, in the year of our Lord one thousand eight hundred and ninety-one.

Present, the honorable John W. Champlin, chief justice; Allen B. Morse, John W. McGrath, Charles D. Long, Claudius B. Grant, associate justices.

JOHN BUTLER, Complainant,
vs.
THE GRAND RAPIDS AND INDIANA R. R. Co. *et al.*, Def'ts and App'l'ts.

The argument heretofore commenced herein is concluded and the cause submitted.

549 Supreme Court of the State of Michigan.

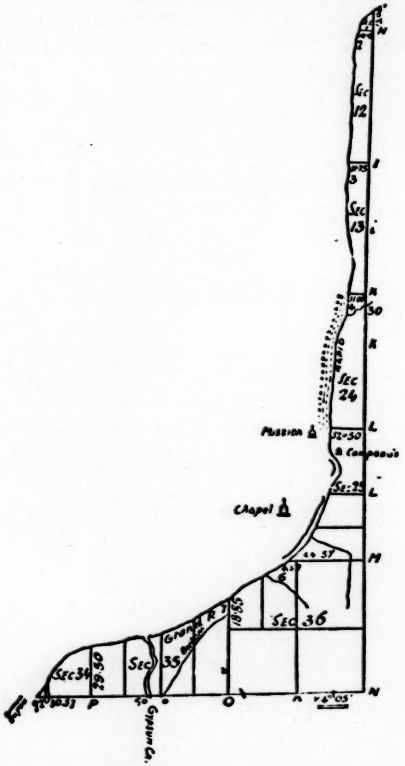
Opinion.

JOHN BUTLER
vs.
THE GRAND RAPIDS & INDIANA R. R. *et al.*

Complainant is the owner of lots numbered 5, 6, 7, 8, 9, and the north half of lot 13 of Bryan & Ball's subdivision plat of the village of Kent, now part of the city of Grand Rapids. He derives his title from Lucius Lyon and E. P. Hastings, who obtained a patent from the United States November 5, 1833, for the north fractional south-east quarter of section 23, T. 7 N., R. 12 W. This land is locacated on the east bank of Grand river. In this river and opposite to that portion of section 25 lying east of the river lay a piece of ground now known as Island No. 5 and containing the land here in controversy. Complainant claims the land by virtue of his riparian ownership. Defendant claims the land by virtue of patent from the United States. Complainant claimed actual possession and filed this bill claiming that defendant's alleged patent constitutes a cloud upon his title, and prays to have it declared void in so far as it affects his title. A large mass of testimony was taken as to the character of this so-called island at the time of the original surveys and for some years subsequent, the complainant's testimony tending to show that it was at first a low sand bar covered a good part of the year with

water and the defendant's testimony tending to show that it was then a well-defined island.

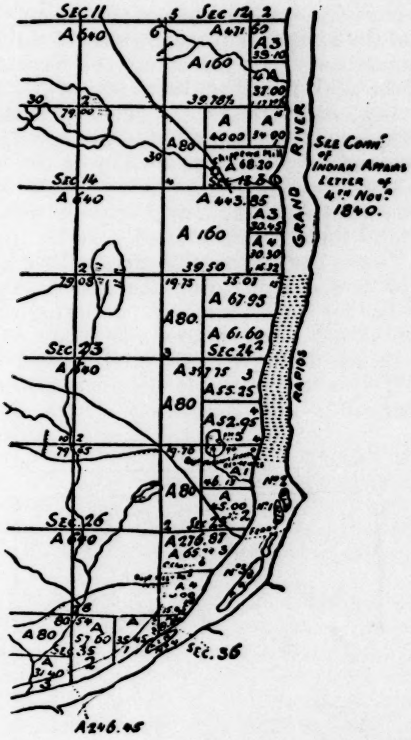
550 It is immaterial to determine what the facts are as to the condition of this land in those early days, for in our judgment it is of no consequence whether it was what might be termed "an island" or a "sand bar" or a "piece of low wet ground." The law is the same in either case. The land upon the east bank of the river was surveyed in 1831. The east bank was meandered at the same time and so also was the west bank. Below is a map of that survey as filed in the surveyor general's office July 7, 1831.



551 On February 2, 1832, another map was filed differing only from the above in that it contained the number of acres in each subdivision, and instead of the crooked lines in the first map, evidently representing land in the river, these lines are continued so as to represent islands.

The land upon the west side of the river was surveyed in 1837 and also four islands in the river was surveyed at the same time and the acreage of each given. The islands then surveyed are re-

presented upon the map of the survey, filed in the surveyor general's office April 30, 1838, a portion of which, representing the location of these islands, is here given.

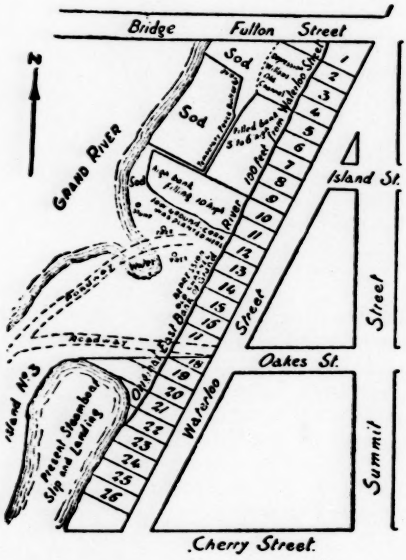


552 The west bank of the river was again meandered at this time. The acreage of these four islands and that of the main land are given in this survey. In surveying Island No. 3 the surveyor began at the lower end of the island. The eleventh course took him "to maple on the head of island." After taking his next course from the maple he made the following record: "Channel between this and low willow isle 75 lks. wide and 3 ft. deep opposite ft. of willow isle on left, 250 of low wet ground on left to channel." This "low willow isle" is evidently what is now known as Island No. 5 as changed by the action of the water.

In 1856 under instructions from the surveyor general of the United States for Ohio, Indiana, and Michigan, a deputy surveyor surveyed this land as Island No. 5. In 1871 the defendant obtained a patent for it, claiming that said patent was issued under the act of Congress approved June 7, 1864, granting lands to the State of Michigan for the construction of certain railroads. This

patent was not recorded till August 9, 1887, and on September 9, following this bill as filed. The channel between the islands and the east bank was from seventy-five to one hundred feet wide. The channel between the islands and the west bank was several times wider. The depth of the water in each was about the same. The middle thread of the river was therefore west of the islands. About the year 1836 steamboats were placed on the river and docks were erected on the east bank nearly opposite Island No. 1. The principal business by boat was with the east side, where the city of Grand Rapids was situated. Steamboats also ran up the west chan-
553 nel to a steamboat warehouse on the *on the* west side of the river.

About the year 1870 the east channel opposite Islands Nos. 1 and 2 was filled up, and the city constructed a sewer into and through that channel. The upper part of this channel was gradually filled, mainly by the owners of land upon the east bank. By these fillings this island has for some time been connected with and become a part of the mainland. The channel has been dredged out east of Island No 3 and a steamboat slip and landing constructed, the upper end of which is a considerable distance below Island No. 5. The present situation is quite accurately shown by the following map:



554 The northern end of Island No. 5 extended across Fulton street, while the southern end extended to a point nearly opposite to lot No. 16.

1. Under these facts the principal question in controversy is, Did the original grant carry with it the title to the middle thread of the

stream or was it limited to the east meander line thereof? It is the well-recognized rule in this State that a grantee of land bounded in the deed of conveyance by a stream takes title to the land under the water to the center or middle thread of the stream in the absence of an expressed reservation.

This rule applies to grants by the United States Government as well as to grants by individuals.

The legal maxim must here be borne in mind that all grants must be construed most strongly against the grantors. To this maxim the Government forms no exception. Reservation cannot be implied. When, therefore, the Government has surveyed its lands along the bank of a river and has sold and conveyed such lands by Government subdivisions its patent conveys the title to all islands lying between the meander line and the middle thread of the river, unless previous to such patent it has surveyed such islands as governmental subdivisions or expressly reserves them when not surveyed.

Webber *vs.* Pere Marquette Boom Co., 62 Mich., 626; Fletcher *vs.* Thunder Bay Boom Co., 51 Mich., 277; Granger *vs.* Avery, 64 Me., 292; Jones *vs.* Soulard, 24 How., 41; Middleton *vs.* Pritchard, 3 Scam., 510; Chandos *vs.* Mack, 46 N. W. R., 803; Railroad Co. *vs.* Schurmeir, 7 Wall., 272.

555 , In these cases the lands involved were all islands or "middle lands," and a full discussion of the principle and the authorities can there be found. It is enough for the present case to refer to the authorities which so clearly establish the principle; but we will call attention to the facts in Granger *vs.* Avery, *supra*, as an illustration.

January 28, 1793, the Commonwealth of Massachusetts deeded to the grantors of Granger certain lands on the bank of the St. Croix river which formed the boundary line between that Commonwealth and New Brunswick. The grant made no reference to the island, which was 16 rods wide and 65 rods long. September 29, 1794, the Commonwealth deeded this island, known as Grass island, to a tribe of Indians. The court held that no title passed to the Indians, because, by the deed to plaintiff's grantors of the land upon the shore, the title to the island had already passed and the Commonwealth had nothing left to convey. The deed to the Indians was not recorded till June 9, 1842. The defendant Avery, claiming title from the Indians, went upon the island and cut the grass in 1854, and the plaintiff brought an action of trespass *quare cansum fregit*. This rule of the common law does not prevail in some States, whose courts hold that where the streams are navigable the title to the beds of the streams is in the State. People *vs.* Canal Appraisers, 33 N. Y., 461.

So it is held in Iowa that navigability, in fact, forms the foundation for navigability in law; that the test of navigability is to be determined by use or by public act or declaration, and that if under this test the stream be navigable the boundary of the shore-owner is the high-water mark.

556 McManus *vs.* Carmichael, 3 Iowa, 1.

This is the rule in California. Packer *vs.* Bird, 11 S. Ct., 210.

But in this State the *medium filium aquæ* of our navigable streams is the boundary of the lands of the riparian owners, whose rights, however, are servient to the use of such streams as public highways.

In the present case there is no act on the part of the Government showing any intention to reserve this land. The only inference that can be drawn from the facts is that the Government agents, its surveyors, did not consider it of sufficient value to survey. It was not surveyed until about twenty-five years after the survey of 1831 and not till nearly twenty years after the survey of 1837, when the other islands and the lands upon the west bank were surveyed, thus completing the survey in that region. The learned counsel for defendants assume that the Government had the right to survey these islands in 1837 and thus reserve them to the Government, and that it therefore had the same right in 1856. If his assum-tion be true the conclusion is correct. It would then follow that the Government has the right to survey any island in the river at the present time which has not been previously surveyed and sold. It would also follow that if the Government had not already surveyed and sold this island it might now do so. Until the Government has sold and conveyed its lands upon the banks of our fresh-water streams it may, of course, survey any islands lying opposite them, and thus ex-ressly reserve them out of the grant of the shore lands.

The grant to Lyon and Hastings was made under the survey
557 of 1831, by which both banks of Grand river were meandered and by which the middle thread of the river was fixed west of this island. Under the authorities above cited that grant clearly vested in them the title to the land in controversy. No subsequent survey by the Government can deprive them of it. The Government appears to have recognized this rule by discontinuing such surveys. Chandos *vs.* Mack, *supra.*

2. There is no force in the objection made by the defendants that this is a proceeding to cancel a patent, which can only be brought by the Government itself. So far as this action is concerned the complainant cannot raise the question whether this land was included in the act of Congress by virtue of which the defendants claim title, but in this or any similar action it may be shown that the title had passed by a former grant and that the Government had no title to convey. In such cases courts will protect purchasers from subsequent surveys. Webber *vs.* Pere Marquette Boom Co., *supra;* Cragin *vs.* Powell, 128 U. S., 691; Burt *vs.* Busch, 46 N. W. R., 790.

3. It is insisted by the defendants that the theory of complainant's bill is that this was not an island at the time of the original grant; that the proofs show that it was an island, and that therefore the complainant has made no case for relief. We think this is too technical a construction of the rules of pleading in equity courts. It is described in the bill as a "sand bar" or "piece of ground;" again, "a piece of middle ground," and again as "middle ground." We think this description broad enough to include the term

island, even if the proofs should — justify that description.
558 The defendants have not been prejudiced or surprised, and if the defendants were technical-y correct an amendment would be granted in this court to conform to the proofs.

4. Complainant did not introduce in evidence the original patent, nor the original record of it, nor a certified copy of it. Defendants therefore insist that there is no evidence that this island was not reserved from the grant. The original patent and the record thereof in the office of the register of deeds for the county of Kent had been destroyed by fire. This fire occurred in 1860. There was in existence what is known as the Scranton abstract. This was purchased by the county of Kent, and by act No. 315, Laws of 1865, the legislature made it a public record and gave it the same effect as the records in the office of the register of deeds possess. This was introduced in evidence and showed the description above given of the land conveyed by the patent to Lyon and Hastings. The tract book kept in the office of the register of deeds for Kent county was also introduced in evidence and showed the same description to the same grantees. The original record having been destroyed, we think the complainant made out a *prima facie* case of the contents of the patent, and that the burden of proof was then shifted to the defendants to show a reservation, if any were made.

5. Defendants insist that complainant is now estopped from asserting any claim to this island (1) by non-claim; (2) by taxes paid by defendant; (3) by condemnation proceedings.

Within a month after the defendants had recorded their evidence of title complainant filed this bill. The defendants had
559 never been in possession of the property. Complainant had exercised many acts of ownership. No rights of innocent third parties here intervene. The defendants were in no position to set up the doctrine of estoppel by non-claim when they were neither in possession nor had a title upon record.

It is a sufficient answer to the claim of estoppel by the payment of taxes to say that this was done at the express request of the agent of the defendant corporation from 1874 to 1887 without any record title and without any notice to the complainant; that said agent at the same time claimed that other lands belonging to the railroad company were exempt from taxation, and that immediately upon hearing of such claim the complainant protested to the supervisor and asserted his ownership to the center of the stream. We are cited to no case and we think none can be found which holds that a payment of taxes under these circumstances estops the owner from asserting his title.

In August, 1883, the common council took the necessary steps for opening and extending East Fulton street from Waterloss street and to condemn the land necessary for that purpose. It will be seen that this street extended across the upper end of Island No. 5, but which at that time had become a part of the main land by filling in the channel. That portion of Island No. 5 required for such improvement was described as follows: "So much of Island No. 5, in Grand river, * * * as lies between the center line of East Fulton street

produced westerly and a line parallel therewith and distant
560 thirty-three feet south therefrom." Opposite the name of owner was the following: "Grand Rapids and Indiana Railroad Company claims to be owner of fourth parcel" (meaning the parcel above described). The jury awarded — compensation and damages to the defendant railroad company the sum of twenty-five dollars. The common council assessed the cost of the improvement upon properly-owners benefitted, and among such owners was the defendant railroad company, assessed $850. Defendant's counsel state in their brief that complainant had full knowledge of these proceedings and knew of this tax assessed against the defendant railroad company. We find no such evidence upon the record unless it is to be inferred from the notice of publication in a newspaper, which is the only proof of service of such notice contained in the record; but if complainant had been possessed of the full knowledge claimed, this could not deprive him of the title to his land. This improvement did not touch nor involve that part of Island No. 5 owned by complainant. For aught that appears upon this record, the defendant might have owned the rest of Island No. 5. Complainant's lots were assessed to pay for this improvement. Upon what principle can *be* be held estopped to assert his title by these proceedings which did not involve this land and in which he was only interested as a citizen owning property in the vicinity? There was nothing upon the face of these proceedings to indicate to him that the title to any of his lands was involved or even put in jeopardy.

6. Complainant has four houses upon the front of these lots,
in one of which he lives. As already stated, the channel
561 has been filled by him so that the island and the mainland are now connected. It has from time to time been used by his tenants for various purposes. We think his possession sufficient to maintain his suit.

Decree affirmed with costs.

C. B. GRANT.
JOHN W. McGRATH.
A. B. MORSE.
CHAS. D. LONG.
JOHN W. CHAMPLIN.

(Endorsed:) Filed April 17, 1891. Chas. C. Hopkins, clerk supreme court.

562 At a session of the supreme court of the State of Michigan, held at the supreme court room, in the city of Lansing, on the seventeenth day of April, in the year of our Lord one thousand eight hundred and ninety-one.

Present: The Honorable John W. Champlin, chief justice; Allen B. Morse, John W. McGrath, Charles D. Long, Claudius B. Grant, associate justices.

JOHN BUTLER, Complainant,
vs.
THE GRAND RAPIDS AND INDIANA RAILROAD COMPANY, THE Continental Improvement Company, The Philadelphia Trust, Safe Deposit and Insurance Company, and William H. Barnes, Defendants and Appellants.

This cause having been brought to this court by appeal from the circuit court for the county of Kent, in chancery, and having been argued by counsel and due deliberation had thereon, it is now ordered, adjudged, and decreed by the court that the decree of the circuit court for the county of Kent, in chancery, be, and the same is hereby, in all things affirmed; and it is further ordered, adjudged, and decreed that the complainant do recover of and from the defendants his costs of both courts, to be taxed.

563 (Copy.)

STATE OF MICHIGAN:

In the Supreme Court.

JOHN BUTLER, Complainant and Appellee,
vs.
GRAND RAPIDS AND INDIANA RAILROAD COMPANY, CONTINENTAL Improvement Company, William H. Barnes, and Philadelphia Trust, Safe Deposit and Insurance Company, Defendants and Appellants.

Complainant's Bill of Costs.

Solicitor or counsel fee by rule	$30 00
Clerk's fees by rule	
Clerk's fees, circuit court—return to writ of error	
Register's fees, circuit court, by statute, certifying record on appeal to supreme court	
Printing record, — pages, at — cts. per page	
Printing 3 briefs, 77 pages, at 50 cts. per page	38 50
Copy of record for printer, — folios, at — cts. per folio	
Stenographer's fees, — folios, at — cts. per folio	
Total	$68 50

KENT COUNTY, *ss:*

Willard F. Keeney, of said county, being duly sworn, says that he is one of the solicitors for complainant in this cause; that the foregoing items of costs charged as disbursements have actually been paid or the liability therefor incurred and were necessary and reasonable in amount; that 77 pages of the briefs of complainant were actually printed in said cause; that the charge of the printer therefor was 50 cts. per page; that such sum was actually paid therefor by said complainant's solicitors.

WILLARD F. KEENEY.

Subscribed and sworn to before me this 28th day of April, A. D. 1891.

MARY B. CAMPBELL,
Notary Public in and for Kent County, Michigan.

564 [Endorsed:] (Copy.) No. 11552. State of Michigan, supreme court. John Butler, compl't, *vs.* Grand Rapids & Indiana Railroad Company *et al.*, def'ts. Complainant's bill of costs. I hereby tax the costs of complainant at the sum of sixty-eight and $\frac{60}{100}$ dollars. Chas. C. Hopkins, clerk supreme court. May 7, 1891.

To T. J. O'Brien, Esq., sol'r for defendants:

Take notice that the foregoing is a true copy of complainant's bill of costs in this cause and of the affidavit of disbursements required by rule. Application will be made to Charles C. Hopkins, clerk of the supreme court, at his office, in the capitol, in the city of Lansing, on the 7th day of May, A. D. 1891, at 10 o'clock a. m., to tax the same.

Yours, etc., BUTTERFIELD & KEENEY,
Sol'rs for Complainant.

COUNTY OF KENT, *ss:*

Mary B. Campbell, being duly sworn, says that on the 28th day of April, 1891, she served a true copy of the within bill of costs, with affidavit and notice of taxation as above, upon Thomas J. O'Brien, the solicitor for the defendants herein, by deliv-ing the same to James H. Campbell, a clerk in the office of said defendants' solicitor, at such office, in the city of Grand Rapids, Kent county, Michigan, in the absence of said defendants' solicitor therefrom.

Subscribed and sworn to before me this 28th day of April, A. D. 1891.

MOSES TAGGART,
Notary Public in and for Kent County, Michigan.

565 *Papers to be Returned with Writ of Error in the Case of—*

THE G. R. & I. RAILROAD CO. *et al.*, Pl'ff- in error,
vs.
JOHN BUTLER, Def't in Error.

Papers attached are—
1. Petition for writ of error.
2. Original citation & proof of service.
3. Copy of supersedeas bond.
4. Prayer for reversal & affidavit of service of copy.
5. Assignments of error & affidavit of service of copy.
6. Copy of notice served on Butterfield & Keeney of issuing of writ, &c., with affidavit of service.

T. J. O'BRIEN,
Att'y for Def't in Error.

May 25, 1891.

566 *Petition for Writ of Error.*

UNITED STATES OF AMERICA:

In the Supreme Court.

JOHN BUTLER, Complainant,
vs.
THE GRAND RAPIDS & INDIANA RAILROAD COMPANY *et al.*, Defendants.

Application of the defendants for writ of error from the Supreme Court of the United States to the supreme court of the State of Michigan to review its final decree in the cause above entitled.

To Hon. Henry B. Brown, associate justice of the Supreme Court of the United States:

The petition of the Grand Rapids and Indiana Railroad Company, the Continental Improvement Company and William H. Barnes, and the Philadelphia Trust, Safe Deposit and Insurance Company respectfully shows:

I. That your petitioners are all of the defendants in the cause above entitled; that the subject-matter of the suit is a parcel
567 of land in the city of Grand Rapids, Kent county, Michigan, described in the Government survey as island numbered five, in the Grand river.

The defendants claim title to said land in fee, to wit, that the fee passed from the United States to the defendant railroad company, and the other defendants have rights therein derived from the railroad company by virtue of certain trust deeds and mortgage.

II. On the 28th day of March, 1871, the United States, by its patent duly issued on said day, signed by the President of the United States, granted the land above described unto the State of Michigan for the use and benefit of the Grand Rapids and Indiana Railroad Company and its assigns, to have and to hold the said tract, with the appurtenances thereof, unto the said State for the use and benefit of said railroad company and its assigns forever, and the said railroad company, to wit, on the same day, duly received and accepted said patent, and since that time has claimed to be the owner in fee of said land, subject only to the rights of its codefendants under said trust deeds and mortgage.

III. The constitution of the State of Michigan, adopted A. D. 1850, and still in force, provides that "the judicial power is vested in one supreme court, in circuit courts, in probate courts, and in justices of the peace" (art. 6, sec. 1), and that "the supreme court shall
568 have a general superintending control over all inferior courts, and shall have power to issue writs of error, *habeus corpus* mandamus, *quo warranto*, *procedendo*, and other original and remedial writs, and to hear and determine the same. In all other cases it shall have appellate jurisdiction only." (Art. 6, sec. 3.)

"The circuit courts shall have original jurisdiction in all matters,

civil and criminal, not excepted in this constitution and not prohibited by law." (Art. 6, sec. 8.)

The original jurisdiction of the circuit courts in equity cases is not excepted by any provision in said constitution nor prohibited by any provision of law.

It is provided by the statutes of said State of Michigan as follows:

"The several circuit courts of this State shall be courts of chancery within and for their respective counties." (Revised Stat., 1846, chap. 247, sec. 1; H. S. Comp., sec. 6592.)

"The powers and jurisdiction of the circuit courts in chancery in and for their respective counties shall be coextensive with the powers and jurisdiction of the courts in chancery in England." (Same, sec. 21, as amended 1881; H. S., sec. 6611.)

And sec. 143 of the same chapter, as amended 1883 (H. S., sec. 6737), provides that any complainant or defendant who may think himself aggrieved by the decree or final order of a circuit court in chancery in any cause may appeal therefrom to the supreme court.

And sec. 147 of the same chapter (H. S., sec. 674) provides that upon appeal from any order or decree of the circuit
569 court in chancery the supreme court shall hear and determine such appeal and all matters concerning the same, and shall have power to reverse, affirm, or alter such order or decree and to make such other order or decree therein as shall be just.

IV. On the 9th day of September, 1887, said John Butler filed his bill of complaint in the circuit court for the county of Kent, in chancery; that in said bill he alleged that he was the owner in fee of certain lands in said city of Grand Rapids, viz: Lots five, six, seven, eight, and the north half of thirteen, in Bryan & Ball's subdivision plat of the village of Kent.

That said lands were originally a part of the north half of the southeast fractional quarter of section twenty-five, in township seven north, range twelve west, in Kent county, Michigan.

That said north half of the southeast fractional quarter of section twenty-five was entered from the Government by Lyon & Hastings in 1832, and that on the 5th day of November, 1833, a patent was issued by the United States to said Lyon & Hastings for said land.

That complainant acquired the lots owned by him at different times between 1870 and 1874, and that his deeds were in direct chain of title from the Government through Lyon & Hastings; that the easterly bank of said river was meandered and surveyed by the United States in 1831; that at the time of said survey and at the time said lands were entered by Lyon & Hastings and
570 the patent therefor issued there lay opposite a portion of said lands and between the middle or thread of said stream (the Grand river) and the easterly bank thereof a low sand bar or piece of ground which constituted a portion of the bed of said stream, which sand bar or piece of ground at that time and for years after was covered with water, even at low water, and never uncovered unless perhaps at a ver- low stage of water.

That no survey of said sand bar or piece of ground was made by

the United States surveyor in 1831 nor up to the time said lands were entered and patent issued nor for many years thereafter.

That Lyon & Hastings by their entry and patent took the usual rights of riparian proprietors, including the title to the soil, to the middle or thread of said stream and including the title to said sand bar or piece of ground.

That afterwards accretions were made to said piece of ground between the easterly bank and middle of the stream, so that the same in low water would at times be left bare, but that said piece of ground continued for many years and long after the meandering thereof, thereinafter in the bill mentioned (meaning the survey by the United States in 1855), to be covered by water and submerged during the greater part of the year.

That there were in the stream above said piece of ground two islands, numbers one and two, and in 1868, 1869, and 1870
571 the channel east of said islands became filled and the waters ceased entirely to flow through said channel, and that the piece of ground or sand bar mentioned was left bare the greater part of the year.

That in or about the year 1856 T. Whelpley, a surveyor, claiming to act under the authority of the United States Government, surveyed and meandered the said piece of ground, and the same was marked and designated as Island Number Five; that on the 28th day of March, 1871, a United States patent was made and executed to the State of Michigan for the use of the Grand Rapids and Indiana Railroad Company, which attempted to cover and convey Island Number Five, in Grand river; that the Grand Rapids and Indiana Railroad Company claimed and did then claim title in fee-simple to said island by virtue of said patent, and said complainant in his said bill further averred that said patent issued to the State for the use of said railroad company is entirely null and void and of no effect, in so far as the same attempts to convey any title to Island Five.

That at the time of said survey, in 1856, and at the time of the issuing of said patent there was no island in fact, but a sand bar merely.

That the United States Land Office acted entirely without jurisdiction in causing such survey to be made in the year 1856, and the Commissioner of said Land Office acted entirely without jurisdiction in issuing said patent in 1871; that their actings and doings in the premises were entirely without authority and could
572 give no title to said Grand Rapids and Indiana Railroad Company, and that the said patent so issued by the United States is a cloud upon complainant's title, and said complainant in and by his bill prayed for relief as follows:

That the said patent may be declared void and of no force or effect, in so far as it attempts to convey any title to said so-called Island Five, and that the said defendants be decreed to release of record by conveyance in proper form all claim against said premises, and that the defendants be enjoined from selling or conveying

said premises; to which was added a prayer for relief generally, and no other relief was prayed.

V. That all the defendants appeared in said suit and answered said bill by their joint and several answer; that by their said answer the defendants admitted that said lots 5, 6, 7, 8, 9, and north half of 13, Bryan & Ball's subdivision, were originally part of the north half of the southeast fractional quarter of section 25, and that said parcel was bounded on the west by Grand river. The allegations as to title to said north half of said fractional quarter was left to the proofs.

Defendants also admitted that the easterly bank of said river was surveyed in 1831, and that there lay opposite said lands on the bank a piece of ground, but they denied that the same was a low sand bar, but instead alleged that it was an island and did
573 not constitute part of the bed of the stream, but was in mid-stream, and that part of the river ran between it and the easterly bank of the river.

They admitted that in 1855 the said island was meandered and surveyed by Whelpley, then a deputy surveyor general of the United States, acting under the authority and order of the Government, and that when measured and surveyed by him was designated as Island Five. They admitted that March 28, 1871, the United States issued a patent to the Grand Rapids and Indiana Railroad Company for said Island Five, but denied that said patent so issued to said railroad company is void, and aver that by said patent title to said Island Five vested completely in the said Grand Rapids and Indiana Railroad Company.

VI. Complainant filed a general replication to said answer.

VII. Thereafter, in April and May, 1890, proofs were duly taken in said cause pursuant to the statutes of Michigan. The proofs in said cause are voluminous, and nearly all of them are upon the question whether the piece of land in question was a mere sand bar under water or an island in the early years 1831, 1832, etc.

Complainant introduced documentary evidence as to the title of north half of southeast fractional quarter of section, 25 and there were also introduced certified copies of field-notes and maps of the Government surveys.

574 VIII. On the 3rd day of May, 1890, the said cause was submitted upon the pleadings and proofs to the circuit court for the county of Kent, in chancery, for its decision; and on the 17th day of May, 1890, the said circuit court for the county of Kent, in chancery, made and entered its final decree in said cause, and did therein order, adjudge, and decree that the said patent issued by the United States to the State of Michigan for the use of the said railroad company on the 28th day of March, 1871, purporting to convey Island No. 5, in the Grand river, was issued without jurisdiction and is void, and that the defendants within sixty days release of record by conveyance all claim of right and title in and to said premises to the complainant, who was the owner thereof.

IX. That the said defendants within the time allowed by the statutes of Michigan and in the form thereby prescribed duly ap-

pealed from the decree of the circuit court to the supreme court of the State of Michigan.

That the record and proceedings in said cause, to wit, the pleadings and proofs and decree of the circuit court, were duly certified and transmitted to the supreme court; that during the January term, 1891, of the said supreme court the said decree and record were placed before said supreme court at its session held on the 25th and 26th days of February, 1891, and argued, and on the 17th
575 day of April, 1891, the said supreme court announced its decision in said case and did affirm the decree of the circuit court, in chancery, as aforesaid.

That the constitution of the State of Michigan, adopted in 1850 and still in force, provides that "the decisions of the supreme court shall be in writing and signed by the judges concurring therein. All such opinions shall be filed in the office of the clerk of the supreme court."

That in compliance with this provision the decision of the supreme court of the State of Michigan was in writing and was concurred in and signed by all the judges constituting said court, and the same was, on said 17th day of April, 1891, filed in the office of the clerk of said supreme court.

That these defendants have obtained from the said clerk a copy of said decision, duly certified by him, and that the same is annexed to this petition and made a part thereof, marked "A." On the same day the final decree of the supreme court in said cause was made and entered upon its record. It is that the decree of the circuit court be affirmed. A certified copy thereof is annexed hereto, marked "B," and made part of this petition.

X. Your petitioners aver—

(*a.*) That the supreme court of the State of Michigan is the highest court of said State in which a decision in said suit could be had.

(*b.*) That the decision and decree of the said supreme court of the State of Michigan is a final decree in said suit and determines the suit so far as the State courts have jurisdiction respecting the said suit.

576 (*c.*) That there was drawn in question in said suit and litigated and determined therein the validity of an authority exercised under the United States, and that the decision of the supreme court of the State of Michigan as aforesaid was against the validity of the authority so exercised.

That there was drawn in question—

First. The authority of the United States to treat and deal with said Island Five as part of the public domain in 1855 and 1871 and to survey the same in 1855 and to convey the same in 1871.

Second. The validity of authority exercised under the United States by the proper officers of the United States as aforesaid, viz., of the surveyor general and his deputies, in entering upon said lands (Island 5) in 1855 and in surveying and designating the same as part of the public domain, and of the President of the United

States in conveying said Island 5 to the defendant railroad company by the patent dated March 28th, 1871.

And the said supreme court of Michigan did decide against the validity of the said authority and the exercise thereof by said officers under the United States, and did decide that the said survey and patent were void and conveyed no title to said premises to the railroad company.

(*d.*) That in said suit a title and right were claimed by the defendants under an authority exercised under the United
577 States, and the decision of the supreme court of the State of Michigan was against the title and right so claimed by the defendants.

That the defendants claimed the said lands in controversy, viz., Island 5, and claimed the sole and absolute title and right thereto under the said patent thereof, made and issued on the 28th day of March, 1871, by the President of the United States in the exercise of his authority under the United States, and said supreme court decided that the action of the President was void, and that the patent which purports to convey the title and right so claimed was void.

XI. That the rules of the supreme court of the State of Michigan require that the records in all cases submitted to it shall be printed, and that copies shall be delivered to each of the judges before the argument.

That in compliance with these rules the record in this case in the supreme court was printed; that a copy thereof, duly verified by affidavit, is submitted to your honor, together with this petition.

That the said printed record comprises the pleadings in said case and the proofs taken in full (excepting copies of maps introduced in evidence), and said record also contains the final decree aforesaid of the circuit court in chancery. (For convenience of reference the pages are here given. The bill is on pages 1 to 19; the answer, pages 19 to 27; replication, page 27; the proofs, pages 28 to 485; final decree of circuit court, page 489.)

578 XII. These defendants respectfully submit that the said final decree of the supreme court of the State of Michigan in said suit may, under the statutes of the United States, be re-examined in the Supreme Court of the United States, upon writ of error, with the same effect as if the said decree had been rendered in a court of the United States.

XIII. The said defendants aver that they are aggrieved by the said decree of the supreme court of the State of Michigan and they believe and submit that the same is erroneous and not in accordance with the law and justice and equity of the case, and that the same ought to be reversed.

XIV. The defendants pray that the honorable Supreme Court of the United States will re-examine the said decree of the supreme court of the State of Michigan and reverse the same.

XV. The defendants pray that a writ of error issue out of the Supreme Court of the United States to the supreme court of the State of Michigan to bring the said decree and record in said suit into the Supreme Court of the United States for re-examination,

and pray for the allowance of a writ of error herein and for such other process as is provided by law, to the end that the errors
579 aforesaid done your petitioners in and by the decree of said supreme court of the State of Michigan in said cause may be corrected by the Supreme Court of the United States.

Dated April 29th, 1891.

THE GRAND RAPIDS AND INDIANA RAILROAD COMPANY,
THE CONTINENTAL IMPROVEMENT COMPANY,
THE PHILADELPHIA TRUST, SAFE DEPOSIT AND INSURANCE COMPANY,
WILLIAM H. BARNES, *Petitioners,*
By T. J. O'BRIEN, *Their Solicitor.*

T. J. O'BRIEN,
Solicitor for Petitioners.

STATE OF MICHIGAN, } ss:
County of Kent, }

T. J. O'Brien, being duly sworn, deposes and says that he is and since 1883 has been the general counsel of The Grand Rapids and Indiana Railroad Company, one of the petitioners in the foregoing petition, and that he was its solicitor of record and conducted the defense of the suit mentioned in said petition in the circuit court for the county of Kent and upon appeal in the supreme court of the State of Michigan; that therein he had occasion to investigate and ascertain the facts respecting the subjects of litigation in said suit.

That he has read the foregoing petition and knows the contents thereof, and that the statements of fact therein are true; that all the petitioners excepting Barnes are corporations, and deponent is authorized to sign this petition for all the defendants in said suit.

T. J. O'BRIEN.

Subscribed and sworn to before me this 1st day of May, 1891.

WM. C. VANDENBERG,
Notary Public, Kent County, Michigan.

Writ of error allowed and bond fixed at one thousand dollars. May 5, 1891.

HENRY B. BROWN,
Asso. Just. Sup. Ct.

[Endorsed:] Filed May 26, 1891. Chas. C. Hopkins, clerk.

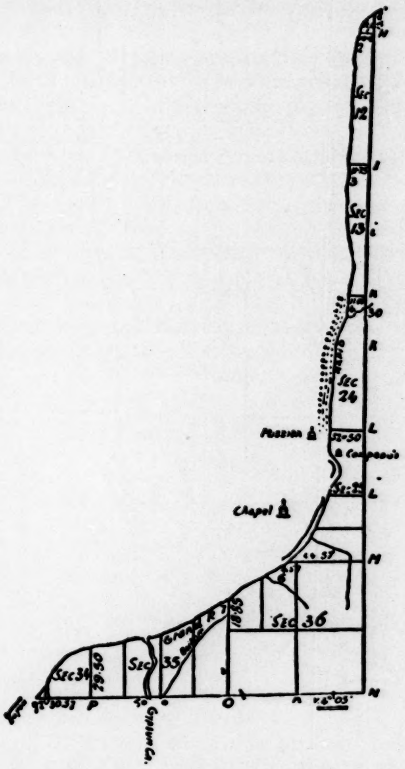
580 A. See page 10 of preceding petition.

Supreme Court of the State of Michigan.

JOHN BUTLER
vs.
THE GRAND RAPIDS & INDIANA R. R. Co. *et al.*

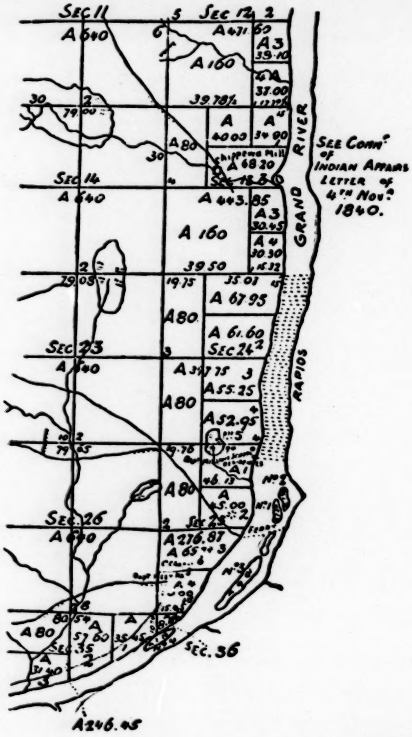
Complainant is the owner of lots numbered 5, 6, 7, 8, 9, and the north half of lot 13 of Bryan & Ball's subdivision plat of the village of Kent, now part of the city of Grand Rapids. He derives his title from Lucius Lyon and E. P. Hastings, who obtained a patent from the United States November 5, 1833, for the north fractional south-east quarter of section 23, T. 7 N., R. 12 W. This land is locacated on the east bank of Grand river. In this river and opposite to that portion of section 25 lying east of the river lay a piece of ground now known as Island No. 5 and containing the land here in controversy. Complainant claims the land by virtue of his riparian ownership. Defendant claims the land by virtue of patent from the United States. Complainant claimed actual possession and filed this bill claiming that defendant's alleged patent constitutes a cloud upon his title, and prays to have it declared void in so far as it affects his title. A large mass of testimony was taken as to the character of this so-called island at the time of the original surveys and for some years subsequent, the complainant's testimony tending to show that it was at first a low sand bar covered a good part of the year with water and the defendant's testimony tending to show that it was then a well-defined island.

581 It is immaterial to determine what the facts are as to the condition of this land in those early days, for in our judgment it is of no consequence whether it was what might be termed "an island" or a "sand bar" or a "piece of low wet ground." The law is the same in either case. The land upon the east bank of the river was surveyed in 1831. The east bank was meandered at the same time and so also was the west bank. Below is a map of that survey as filed in the surveyor general's office July 7, 1831.



582 On February 2, 1832, another map was filed differing only from the above in that it contained the number of acres in each subdivision, and instead of the crooked lines in the first map, evidently representing land in the river, these lines are continued so as to represent islands.

The land upon the west side of the river was surveyed in 1837 and also four islands in the river were surveyed at the same time and the acreage of each given. The islands then surveyed are represented upon the map of the survey, filed in the surveyor general's office April 30, 1838, a portion of which, representing the location of these islands, is here given.

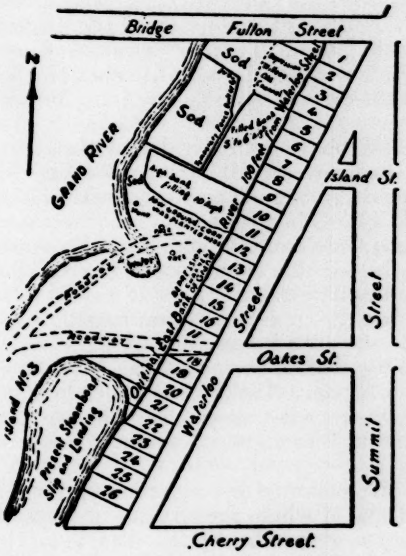


583 The west bank of the river was again meandered at this time. The acreage of these four islands and that of the main land *are* given in this survey. In surveying Island No. 3 the surveyor began at the lower end of the island. The eleventh course took him "to maple on the head of island." After taking his next course from the maple he made the following record: "Channel between this and low willow isle 75 lks. wide and 3 ft. deep opposite ft. of willow isle on left, 250 of low wet ground on left to channel." This "low willow isle" is evidently what is now known as Island No. 5 as changed by the action of the water.

In 1856, under instructions from the surveyor general of the United States for Ohio, Indiana, and Michigan, a deputy surveyor surveyed this land as Island No. 5. In 1871 the defendant obtained a patent for it, claiming that said patent was issued under the act of Congress approved June 7, 1864, granting lands to the State of Michigan for the construction of certain railroads. This patent was not recorded till August 9, 1887, and on September 9 following this bill was filed. The channel between the islands and the east bank was from seventy-five to one hundred feet wide. The channel between the islands and the west bank was several times

wider. The depth of the water in each was about the same. The middle thread of the river was therefore west of the islands. About the year 1836 steamboats were placed on the river and docks were erected on the east bank nearly opposite Island No. 1. The principal business by boat was with the east side, where the city of Grand Rapids was situated. Steamboats also ran up the west chan-
584 nel to a steamboat warehouse on the west side of the river.

About the year 1870 the east channel opposite Islands Nos. 1 and 2 was filled up, and the city constructed a sewer into and through that channel. The upper part of this channel was gradually filled, mainly by the owners of land upon the east bank. By these fillings this island has for some time been connected with and become a part of the mainland. The channel has been dredged out east of Island No. 3 and a steamboat slip and landing constructed, the upper end of which is a considerable distance below Island No. 5. The present situation is quite accurately shown by the following map:



585 The northern end of Island No. 5 extended across Fulton street, while the southern end extended to a point nearly opposite to lot No. 16.

1. Under these facts the principal question in controversy is, Did the original grant carry with it the title to the middle thread of the stream or was it limited to the east meander line thereof? It is the well-recognized rule in this State that a grantee of land bounded in the deed of conveyance by a stream takes title to the land under the water to the center or middle thread of the stream in the absence of an expressed reservation.

This rule applies to grants by the United States Government as well as to grants by individuals.

The legal maxim must here be borne in mind that all grants must be construed most strongly against the grantors. To this maxim the Government forms no exception. Reservation cannot be implied. When, therefore, the Government has surveyed its lands along the bank of a river and has sold and conveyed such lands by Government subdivisions its patent conveys the title to all islands lying between the meander line and the middle thread of the river, unless previous to such patent it has surveyed such islands as governmental subdivisions or expressly reserves them when not surveyed.

Webber *vs.* Pere Marquette Boom Co., 62 Mich., 626; Fletcher *vs.* Thunder Bay Boom Co., 51 Mich., 277; Granger *vs.* Avery, 64 Me., 292; Jones *vs.* Soulard, 24 How., 41; Middleton *vs.* Pritchard, 3 Scam., 510; Chandos *vs.* Mack, 46 N. W. R., 803; Railroad Co. *vs.* Schurmeir, 7 Wall., 272.

586 In these cases the lands involved were all islands or "middle lands," and a full discussion of the principle and the authorities can there be found. It is enough for the present case to refer to the authorities which so clearly establish the principle; but we will call attention to the facts in Granger *vs.* Avery, *supra*, as an illustration.

January 28, 1793, the Commonwealth of Massachusetts deeded to the grantors of Granger certain lands on the bank of the St. Croix river which formed the boundary line between that Commonwealth and New Brunswick. The grant made no reference to the island, which was 16 rods wide and 65 rods long. September 29, 1794, the Commonwealth deeded this island, known as Grass island, to a tribe of Indians. The court held that no title passed to the Indians, because, by the deed to plaintiff's grantors of the land upon the shore, the title to the island had already passed and the Commonwealth had nothing left to convey. The deed to the Indians was not recorded till June 9, 1842. The defendant Avery, claiming title from the Indians, went upon the island and cut the grass in 1854, and the plaintiff brought an action of trespass *quare cansum fregit*.

This rule of the common law does not prevail in some States, whose courts hold that where the streams are navigable the title to the beds of the streams is in the State. People *vs.* Canal Appraisers, 33 N. Y., 461.

So it is held in Iowa that navigability, in fact, forms the foundation for navigability in law; that the test of navigability is to be determined by use or by public act or declaration, and that if under this test the stream be navigable the boundary of the shore-owner is the high-water mark.

587 McManus *vs.* Carmichael, 3 Iowa, 1.

This is the rule in California. Packer *vs.* Bird, 11 S. Ct., 210.

But in this State the *medium filium aquæ* of our navigable streams is the boundary of the lands of the riparian owners, whose rights,

however, are servient to the use of such streams as public highways.

In the present case there is no act on the part of the Government showing any intention to reserve this land. The only inference that can be drawn from the facts is that the Government agents, its surveyors, did not consider it of sufficient value to survey. It was not surveyed until about twenty-five years after the survey of 1831 and not till nearly twenty years after the survey of 1837, when the other islands and the lands upon the west bank were surveyed, thus completing the survey in that region. The learned counsel for defendants assume that the Government had the right to survey these islands in 1837 and thus reserve them to the Government, and that it therefore had the same right in 1856. If his assum-tion be true the conclusion is correct. It would then follow that the Government has the right to survey any island in the river at the present time which has not been previously surveyed and sold. It would also follow that if the Government had not already surveyed and sold this island it might now do so. Until the Government has sold and conveyed its lands upon the banks of our fresh-water streams it may, of course, survey any islands lying opposite them, and thus ex-ressly reserve them out of the grant of the shore lands.

The grant to Lyon and Hastings was made under the survey
588 of 1831, by which both banks of Grand river were meandered and by which the middle thread of the river was fixed west of this island. Under the authorities above cited that grant clearly vested in them the title to the land in controversy. No subsequent survey by the Government can deprive them of it. The Government appears to have recognized this rule by discontinuing such surveys. Chandos *vs.* Mack, *supra.*

2. There is no force in the objection made by the defendants that this is a proceeding to cancel a patent, which can only be brought by the Government itself. So far as this action is concerned the complainant cannot raise the question whether this land was included in the act of Congress by virtue of which the defendants claim title, but in this or any similar action it may be shown that the title had passed by a former grant and that the Government had no title to convey. In such cases courts will protect purchasers from subsequent surveys. Webber *vs.* Pere Marquette Boom Co., *supra;* Cragin *vs.* Powell, 128 U. S., 691; Burt *vs.* Busch, 46 N. W. R., 790.

3. It is insisted by the defendants that the theory of complainant's bill is that this was not an island at the time of the original grant; that the proofs show that it was an island, and that therefore the complainant has made no case for relief. We think this is too technical a construction of the rules of pleading in equity courts. It is described in the bill as a "sand bar" or "piece of ground;" again, "a piece of middle ground," and again as "middle ground." We think this description broad enough to include the term island, even if the proofs should — justify that description.
589 The defendants have not been prejudiced or surprised, and

if the defendants were technical-y correct an amendment would be granted in this court to conform to the proofs.

4. Complainant did not introduce in evidence the original patent, nor the original record of it, nor a certified copy of it. Defendants therefore insist that there is no evidence that this island was not reserved from the grant. The original patent and the record thereof in the office of the register of deeds for the county of Kent had been destroyed by fire. This fire occurred in 1860. There was in existence what is known as the Scranton abstract. This was purchased by the county of Kent, and by act No. 315, Laws of 1865, the legislature made it a public record and gave it the same effect as the records in the office of the register of deeds possess. This was introduced in evidence and showed the description above given of the land conveyed by the patent to Lyon and Hastings. The tract book kept in the office of the register of deeds for Kent county was also introduced in evidence and showed the same description to the same grantees. The original record having been destroyed, we think the complainant made out a *prima facie* case of the contents of the patent, and that the burden of proof was then shifted to the defendants to show a reservation, if any were made.

5. Defendants insist that complainant is now estopped from asserting any claim to this island (1) by non-claim; (2) by taxes paid by defendant; (3) by condemnation proceedings.

Within a month after the defendants had recorded their evidence of title complainant filed this bill. The defendants had
590 never been in possession of the property. Complainant had exercised many acts of ownership. No rights of innocent third parties here intervene. The defendants were in no position to set up the doctrine of estoppel by non-claim when they were neither in possession nor had a title upon record.

It is a sufficient answer to the claim of estoppel by the payment of taxes to say that this was done at the express request of the agent of the defendant corporation from 1874 to 1887 without any record title and without any notice to the complainant; that said agent at the same time claimed that other lands belonging to the railroad company were exempt from taxation, and that immediately upon hearing of such claim the complainant protested to the supervisor and asserted his ownership to the center of the stream. We are cited to no case and we think none can be found which holds that a payment of taxes under these circumstances estops the owner from asserting his title.

In August, 1883, the common council took the necessary steps for opening and extending East Fulton street from Waterloo street and to condemn the land necessary for that purpose. It will be seen that this street extended across the upper end of Island No. 5, but which at that time had become a part of the main land by filling in the channel. That portion of Island No. 5 required for such improvement was described as follows: "So much of Island No. 5, in Grand river, * * * as lies between the center line of East Fulton street produced westerly and a line parallel therewith and distant
591 thirty-three feet south therefrom." Opposite the name of

owner was the following: "Grand Rapids and Indiana Railroad Company claims to be owner of fourth parcel" (meaning the parcel above described). The jury awarded — compensation and damages to the defendant railroad company the sum of twenty-five dollars. The common council assessed the cost of the improvement upon properly-owners benefitted, and among such owners was the defendant railroad company, assessed $850. Defendant's counsel state in their brief that complainant had full knowledge of these proceedings and knew of this tax assessed against the defendant railroad company. We find no such evidence upon the record unless it is to be inferred from the notice of publication in a newspaper, which is the only proof of service of such notice contained in the record; but if complainant had been possessed of the full knowledge claimed, this could not deprive him of the title to his land. This improvement did not touch nor involve that part of Island No. 5 owned by complainant. For aught that appears upon this record, the defendant might have owned the rest of Island No. 5. Complainant's lots were assessed to pay for this improvement. Upon what principle can *he* be held estopped to assert his title by these proceedings which did not involve this land and in which he was only interested as a citizen owning property in the vicinity? There was nothing upon the face of these proceedings to indicate to him that the title to any of his lands was involved or even put in jeopardy.

6. Complainant has four houses upon the front of these lots, in one of which he lives. As already stated, the channel
592 has been filled by him so that the island and the mainland are now connected. It has from time to time been used by his tenants for various purposes. We think his possession sufficient to maintain his suit.

Decree affirmed with costs.

C. B. GRANT.
JOHN W. McGRATH.
A. B. MORSE.
CHAS. D. LONG.
JOHN W. CHAMPLIN.

(Endorsed:) Filed April 17, 1891. Chas. C. Hopkins, clerk supreme court.

STATE OF MICHIGAN, *ss:*

In the Supreme Court.

CLERK'S OFFICE.

I, Charles C. Hopkins, clerk of the supreme court of the State of Michigan, do hereby certify that the annexed is a true and correct copy of the opinion of the court now on file in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom and the whole of said original.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court, at Lansing, this 24th day of April, A. D. 1891.

[Seal of the Supreme Court of Michigan, Lansing.]

CHAS. C. HOPKINS, *Clerk.*

593 B. See page 10, preceding petition.

At a session of the supreme court of the State of Michigan, held at the supreme court room, in the city of Lansing, on the 17th day of April, in the year one thousand eight hundred and ninety-one. Present: The Honorable John W. Champlin, chief justice; Allen B. Morse, John W. McGrath, Charles D. Long, Claudius B. Grant, associate justices.

JOHN BUTLER, Complainant,
vs.
THE GRAND RAPIDS AND INDIANA RAILROAD COMPANY, THE Continental Improvement Company, The Philadelphia Trust, Safe Deposit and Insurance Company, and William H. Barnes, Defendants and Appellants.

This cause having been brought to this court by appeal from the circuit court for the county of Kent, in chancery, and having been argued by counsel and due deliberation had thereon, it is now ordered, adjudged, and decreed by the court that the decree of the circuit court for the county of Kent, in chancery, be, and the same is hereby, in all things affirmed; and it is further ordered, adjudged, and decreed that the complainant do recover of and from the defendants his costs of both courts, to be taxed.

STATE OF MICHIGAN, *ss:*

I, Charles C. Hopkins, clerk of the supreme court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of a decree entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom and the whole of said original decree.

Seal of the Supreme Court of Michigan, Lansing.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court, at Lansing, this 30th day of April, in the year of our Lord one thousand eight hundred and ninety-one.

CHAS. C. HOPKINS, *Clerk.*

[Endorsed:] No. —. State of Michigan. The circuit court for county of ——. In chancery. —— —— *vs.* —— ——. Decree of supreme court affirming decree of circuit court. Filed ——, 189–. —— ——, clerk. —— ——, solicitor for ——.

593½ [Endorsed:] Supreme Court of the United States. Petition for writ of error to supreme court of Michigan to re-

examine its final decree in the case of John Butler, compl'nt, *vs.* The Grand Rapids & Indiana Railroad Company *et al.*, defendants & petitioners for writ. T. J. O'Brien, Grand Rapids, Mich., solicitor for petitioners.

594 UNITED STATES OF AMERICA, *ss:*

The President of the United States to John Butler, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Michigan wherein The Grand Rapids & Indiana Railroad Company, The Continental Improvement Company, William H. Barnes, and The Philadelphia Trust, Safe Deposit & Insurance Company are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the decree rendered against the said plaintiff- in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Henry B. Brown, associate justice of the Supreme Court of the United States, this eighteenth day of May, in the year of our Lord one thousand eight hundred and ninety-one.

HENRY B. BROWN,
Associate Justice of the Supreme Court of the United States.

595 [Endorsed:] 11552 (original). Citation. Filed May 26, 1891. Chas. C. Hopkins, clerk sup. c't.

On this 21st day of May, in the year of our Lord one thousand eight hundred and ninety-one, personally appeared William C. Vandenberg before me, the subscriber, a notary public in and for Kent county, State of Michigan, at the city of Grand Rapids, in said county, and makes oath that he delivered a true copy of the within citation to John Butler, the appellee named therein, who is personally known to the deponent, at the residence of said Butler, in said city of Grand Rapids, and said Butler personally received and retained said copy.

WILLIAM C. VANDENBERG.

Sworn to and subscribed the 21st day of May, A. D. 1891.

HARRY R. WHITMAN,
Notary Public in and for Kent County, State of Michigan.

On this 25th day of May, 1891, personally appeared William C. Vandenberg before me, the subscriber, a notary public in and for Kent county, State of Michigan, at the city of Grand Rapids, in said county, and makes oath that he delivered a true copy of the within citation to Butterfield and Keeney, solicitors for John Butler, the appellee named therein, by handing the same to Roger W. Butterfield, one of said solicitors, personally at their office, in said city of Grand Rapids.

WILLIAM C. VANDENBERG.

Subscribed and sworn to this 25th day of May, A. D. 1891.

C. H. EMERY,
Notary Public, Kent Co., Mich.

596 *Copy of Bond on Error.*

Know all men by these presents that we, The Grand Rapids and Indiana Railroad Company, a corporation organized under the laws of the States of Michigan and Indiana, having its principal office in the city of Grand Rapids, Kent county, Michigan, in behalf of itself and its codefendants, plaintiffs in error, viz., The Continental Improvement Company and The Philadelphia Trust, Safe Deposit and Insurance Company, and William H. Barnes, as trustees, as principal; Wm. R. Shelby and William O. Hughart and Thomas J. O'Brien, of Grand Rapids aforesaid, as sureties, are held and firmly bound unto John Butler in the full and just sum of one thousand dollars, to be paid to the said John Butler, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this eleventh day of May, in the year of our Lord one thousand eight hundred and ninety-one.

Whereas lately, at a supreme court of the State of Michigan, in a suit depending in said court between The Grand Rapids and Indiana Railroad Company, The Continental Improvement Company, William H. Barnes, and The Philadelphia Trust, Safe Deposit and Insurance Company, appellants, and John Butler, appellee, a decree was rendered against the said appellants, and the said appellants having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said John Butler, citing and admonishing him to be and appear at a Supreme Court of the

597 United States to be holden at Washington within thirty days from the date thereof:

Now, the condition of the above obligation is such that if the said appellants shall prosecute said writ of error to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

THE GRAND RAPIDS AND INDIANA RAILROAD COMPANY,
By W. O. HUGHART, *President.* [SEAL.]
W. O. HUGHART. [SEAL.]
THOMAS J. O'BRIEN. [SEAL.]
W. R. SHELBY. [SEAL.]

Attest:
[SEAL.] J. H. P. HUGHART, *Secretary.*

Sealed and delivered in presence of—
JAMES H. CAMPBELL.
WM. C. VANDENBERG.

Approved by—
HENRY B. BROWN,
Asso. Just. Sup. C't.

598 *Prayer for Reversal.*

UNITED STATES OF AMERICA:

In the Supreme Court of the United States.

THE GRAND RAPIDS AND INDIANA RAILROAD COMPANY, THE Continental Improvement Company, William H. Barnes, and The Philadelphia Trust, Safe Deposit and Insurance Company, Appellants,

vs.

JOHN BUTLER, Appellee.

Error to the supreme court of the State of Michigan.

Prayer for Reversal.

The appellants above named, by T. J. O'Brien, their solicitor, aver that the final decree of the supreme court of the State of Michigan, made and entered on the 17th day of April, 1891, is erroneous and not in accordance with equity and justice and would deprive the appellants of their just rights in the premises, and they feel aggrieved thereby and respectfully pray that the same be reversed and that the complainant's bill in this suit be dismissed and that they be awarded their just costs.

Dated Grand Rapids, Mich., May 22d, 1891.

T. J. O'BRIEN,
Solicitor for Appellants.

599 STATE OF MICHIGAN, } *ss:*
County of Kent, }

Wm. C. Vandenberg, being duly sworn, deposes and says that on the 25th day of May, A. D. 1891, he served a true copy of the within prayer for reversal upon Butterfield and Keeney, solicitors for John Butler, appellee, by handing the same personally to Roger W. Butterfield, one of said solicitors, at their office, in the city of Grand Rapids.

WM. C. VANDENBERG.

Subscribed and sworn to before me this 25th day of May, 1891.

C. H. EMERY,
Notary Public, Kent County, Michigan.

[Endorsed:] 11552. Filed May 26, 1891. Chas. C. Hopkins, clerk sup. court.

600 *Assignments of Error.*

UNITED STATES OF AMERICA:

In the Supreme Court of the United States.

THE GRAND RAPIDS AND INDIANA RAILROAD COMPANY, THE CONTINENTAL Improvement Company, William H. Barnes, and The Philadelphia Trust, Safe Deposit and Insurance Company, Appellants,

vs.

JOHN BUTLER, Appellee.

Error to the supreme court of the State of Michigan.

Assignments of Error.

Now come the said appellants, by T. J. O'Brien, their solicitor, and say that in the record and proceedings aforesaid and in the final decree of the supreme court of the State of Michigan made on the 17th day of April, 1891, in this cause there is manifest error in this, to wit:

The said supreme court of the State of Michigan erred—

First. In its said final decree, in affirming the decree of
601 the circuit court for the county of Kent, in chancery, dated May 14th, 1890, whereby it was decreed "that a certain patent heretofore issued by the commissioner of the United States land office to the State of Michigan for the use of the said defendant, Grand Rapids & Indiana Railroad Company, bearing date the 28th day of March, 1871, which was recorded on the 9th day of August, 1887, in the office of the register of deeds for said county of Kent, in Liber 183 of Deeds, on page 1, purporting to cover and convey, among other lands, Island Number Five, so called, in Grand river, by virtue of which the said defendants have claimed title to a portion of the premises described in paragraph one of this decree, conveys no title as against said complainant to any portion of the lands hereinbefore mentioned as owned by him and hereinbefore particularly bounded and described in said paragraph one of this decree, and that, in so far as it attempts to convey any such title, said patent was issued without jurisdiction and is void."

Second. In its said final decree in affirming the said decree of the circuit court, whereby it was decreed that the complainant is the owner in fee-simple of certain premises therein described, in so far as the said description of lands in said decree include- that parcel described in the United States survey as Island Numbered Five, in the Grand river, or any part of said island.

Third. In its said final decree in affirming the said decree of the circuit court in chancery, whereby the defendants in said suit (who
602 are the appellants above named) were decreed and required to release and convey to the complainant in said suit (the appellee above named) the lands in said decree described, and

that said decree should have the force and effect when recorded of such conveyance and release.

Fourth. In its said final decree in affirming the said decree of the said circuit court in chancery, whereby it was decreed that an injunction issue restraining the said defendants from selling or conveying or contracting to sell or convey the premises described in said decree or any part thereof and from asserting any title thereto and from interfering therewith.

Fifth. In determining and deciding that "it is immaterial to determine what the facts are as to the condition of this land (in controversy) in those early days, for in our judgment it is of no consequence whether it was what might be termed an 'island' or 'sand bar' or a 'piece of low, wet ground.' The law is the same in either case."

Sixth. In determining and deciding that "reservation cannot be implied. When, therefore, the Government has surveyed its lands along the bank of a river and has sold and conveyed said land by Government subdivisions, its patent conveys the title to all islands lying between the meander lines and the middle thread of the river, unless previous to such patent it has surveyed such islands as governmental subdivisions or expressly reserves them when not surveyed."

603 Seventh. In determining and deciding that "in the present case there is no act on the part of the Government showing any intention to reserve this land."

Eighth. In determining and deciding that "the grant to Lyon and Hastings was made under the survey of 1831, by which both banks of Grand river were meandered and by which the middle thread of the river was fixed west of this island (No. 5). That grant clearly vested in them the title to the land in controversy. No subsequent survey by the Government could deprive them of it."

Ninth. In determining and deciding that "there is no force in the objection made by the defendants that this is a proceeding to cancel a patent, which can only be brought by the Government itself."

Tenth. In determining and deciding that "it is insisted by the defendants that the theory of complainant's bill is that this was not an island at the time of the original grant, and that the proofs show that it was an island, and that therefore the complainant has made no case for relief. We think this is too technical a construction of the rules of pleading in equity courts. It is described in the bill as a 'sand bar' or 'piece of ground,' a 'piece of middle ground,' and as 'middle ground.' We think this description is broad enough to include the term island. The defendants have not been prejudiced or surprised."

604 Eleventh. In determining and deciding that the entries as to the Lyon and Hastings patent on the Scranton abstract book and the tract book "made out a *prima facie* case of the contents of the patent to Lyon and Hastings, and that the burden of proof was then shifted to the defendants to show a reservation, if any were made."

Twelfth. In considering under the pleadings in this case any question or point concerning the rights of the parties in and to the parcel of land described as Island Number Five upon the theory that the same was in fact an island at the time of the entry and patent of Lyon and Hastings to the north half of the southeast fractional quarter of section twenty-five, township seven north, range twelve west, and in making a decision and determination involving said point and question.

Thirteenth. In deciding and determining this cause upon a question not made by and not admissible under the pleadings in this suit, viz., the theory that said Island Five had not been surveyed by the Government before the said patent to Lyon and Hastings and was not reserved by express stipulation in said patent, and that it therefore passed under said patent to the grantees therein, even if it was an island in fact, said theory also being in direct conflict with the theory and claim of the complainant to said land as expressed in his bill of complaint and of facts sworn to by him in his oath to said bill, upon which his claim in the bill rests.

Wherefore the said appellants pray that the decree of the
605 supreme court of the State of Michigan aforesaid for the errors aforesaid may be reversed, annulled, and altogether held for naught.

Dated May 23d, 1891.

T. J. O'BRIEN,
Solicitor for Complainant.

STATE OF MICHIGAN, } ss:
County of Kent, }

Wm. C. Vandenberg, being duly sworn, deposes and says that on the 25th day of May, A. D. 1891, he served a true copy of the foregoing assignments of error upon Butterfield and Keeney, solicitors for appellee, John Butler, by handing the same personally to Roger W. Butterfield, one of said solicitors, at their office, in the city of Grand Rapids.

WM. C. VANDENBERG.

Subscribed and sworn to before me this 25th day of May, A. D. 1891.

C. H. EMERY,
Notary Public, Kent County, Michigan.

[Endorsed:] 11552. Filed May 26, 1891. Chas. C. Hopkins, clerk supreme court.

606 *Notice to Solicitors for Def't in Error.*

UNITED STATES OF AMERICA:

In the Supreme Court of the United States.

THE GRAND RAPIDS AND INDIANA RAILROAD COMPANY, THE Continental Improvement Company, William H. Barnes, and The Philadelphia Trust, Safe Deposit and Insurance Company, Appellants,

vs.

JOHN BUTLER, Appellee.

To Messrs. Butterfield & Keeney, solicitors for appellee.

GENTLEMEN: Take notice—

1. That the appellants above named feel aggrieved by the final decree of the supreme court of the State of Michigan, made on the 17th day of April, 1891, affirming the decree of the circuit court for the county of Kent, in chancery, dated May 14th, 1890, in the cause above entitled, and they aver that the same is erroneous and not in accordance with equity and justice, and that they desire to have the same re-examined and reversed by the Supreme Court of the United States.

607 2. That they have duly petitioned and prayed for the allowance of a writ of error from the Supreme Court of the United States to the supreme court of the State of Michigan for the re-examination of said decree, and that such writ of error was duly allowed on the 5th day of May, 1891, by Hon. Henry B. Brown, associate justice of the Supreme Court of the United States.

3. That on the 18th day of May, 1891, a writ of error duly issued out of the Supreme Court of the United States, under its seal and the hand of its clerk, directed to the judges of the supreme court of the State of Michigan, commanding them to send the record and proceedings in said cause, with all things concerning the same, to the Supreme Court of the United States within thirty days from the date of said writ, that, the same being inspected, the said Supreme Court may cause further to be done to correct the error complained of what of right and according to the laws and custom of the United States should be done, and said writ was, on the 22d day of May, 1891, duly served upon and delivered to the clerk of said supreme court of the State of Michigan.

4. That on the said 18th day of May, 1891, a citation to said John Butler, appellee, was duly signed by said Henry B. Brown, associate justice of the Supreme Court of the United States; that a copy of said citation is hereto annexed, and that a copy of said citation was duly served on said John Butler on the 21st day of May instant.

608 5. That before the issuing of said citation the said appellants executed a bond in due form in the penal sum of one thousand dollars, with William O. Hughart, Thomas J. O'Brien, and William R. Shelby as sureties, conditioned that if the said appel-

lants shall prosecute their said writ of error to effect and answer all damages and costs if they fail to make their plea good, then the said obligation to be void, else to remain in full force and virtue, and the same was duly approved by said Henry B. Brown, associate justice as aforesaid, and is filed with the clerk of the supreme court of the State of Michigan.

6. Also take notice that the said appellants have duly prepared to be sent up with said writ of error a prayer for reversal and assignments of error, and that true copies respectively of said prayer for reversal and of said assignments of error are hereto annexed.

Dated Grand Rapids, May 23d, 1891.

Yours, &c.,

T. J. O'BRIEN,
Solicitor for App'l'ts.

Papers annexed are—
1. Copy of citation.
2. Copy of prayer for reversal.
3. Copy of assignment of error.

609 STATE OF MICHIGAN, } ss:
County of Kent, }

William C. Vandenberg, being duly sworn, deposes and says that on the 25th day of May, A. D. 1891, at the city of Grand Rapids, in said county, he served upon Butterfield & Keeney, solicitors for John Butler, the complainant and appellee in the cause entitled in the annexed notice, the following papers, viz., a notice of which the annexed is a true copy, and annexed to said notice were true copies of the citation in this suit, dated May 18, 1891, and of the prayer for reversal and of the assignments of error in said cause, the original citation, prayer, and assignments of error being filed together with this proof of service. Said service was made by delivering the papers aforesaid to Roger W. Butterfield, a member of said firm of Butterfield & Keeney, personally.

WILLIAM C. VANDENBERG.

Subscribed and sworn to before me this 25th day of May, 1891.

C. H. EMERY,
Notary Public, Kent Co., Mich.

610 11552.

Parties.	Plaintiff's attorneys.	Defendants' attorneys.
John Butler, complainant, *vs.* The Grand Rapids & Indiana Railroad Company, The Continental Improvement Company, The Philadelphia Trust, Safe Deposit and Insurance Company, and William H. Barnes, defendants and appellants. Appeal from Kent. In chancery.	Butterfield & Keeney.	T. J. O'Brien.

Costs.	Journal.	Date.	Proceedings.
		1890.	
		Sept. 25	Record on appeal filed.
		" "	Two packages of testimony filed.
		Dec. 12	Note of argument filed.
		" 21	Motion to require further printing filed.
		1891.	
		Jan. 6	Affidavit of Butterfield filed.
		" "	" Campbell "
	J., 488...	" "	Motion to require certain maps printed granted.
		Feb. 11	5 books of maps filed.
	" 563...	" 25	Argued in part.
	" 564...	" 26	Concluded and submitted.
	" 608...	April 17	Affirmed with costs.
		May 7	Complainant's costs, taxed at $68.50.
		" 23	Writ of error, Sup. C't U. S., allowed by Brown, J., filed.
		" "	Bond on error filed.
		" 26	Petition for writ of error with allowance filed.
		" 26	Citation with proof of service filed.
		" 26	Prayer for reversal filed.
		" 26	Assignment of errors, Sup. C't U. S., filed.
		June 15	Stipulation as to maps filed.

STATE OF MICHIGAN, *ss:*

I, Charles C. Hopkins, clerk of the supreme court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of the calendar entries in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom and the whole of said original.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court, at Lansing, this — day of ——, A. D. 188–.

—— ——, *Clerk.*

611 UNITED STATES OF AMERICA, *ss:*

Seal of the Supreme Court of the United States.

The President of the United States of America to the honorable the judges of the supreme court of the State of Michigan, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Grand Rapids & Indiana Railroad Company, The Continental Improvement Company, William H. Barnes, and The Philadelphia Trust, Safe Deposit and Insurance Company, appellants, and John Butler, appellee, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said

State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or
612 statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said appellants, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within thirty days from the date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the eighteenth day of May, in the year of our Lord one thousand eight hundred and ninety-one.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
HENRY B. BROWN,
Associate Justice of the Supreme Court of the United States.

613 [Endorsed:] 11552. (Original.) Filed May 23, 1891. Chas. C. Hopkins, clerk supreme court of Michigan.

To the Supreme Court of the United States:

The execution of the within writ of error appears by the transcript of record hereto annexed.

Lansing, Mich., June 15, A. D. 1891.

[Seal of the Supreme Court of Michigan, Lansing.]

CHAS. C. HOPKINS,
Clerk of the Supreme Court of the State of Michigan.

614 Supreme Court of the State of Michigan.

JOHN BUTLER, Complainant,
vs.
THE GRAND RAPIDS AND INDIANA RAILROAD COMPANY, THE Continental Improvement Company, William H. Barnes, and The Philadelphia Trust, Safe Deposit and Insurance Company, Defendants and Appellants.

STATE OF MICHIGAN, *ss:*

In the Supreme Court.

I, Charles C. Hopkins, clerk of the supreme court of the State of Michigan, do hereby certify that the annexed and foregoing is a true and correct copy of the record and of all proceedings had and entered in the above-entitled cause by said court, including the written decision and reasons therefor, signed by the judges of said court and filed in my office; that I have compared the same with the original, and it is a true transcript therefrom and of the whole thereof; that attached thereto are the writ of error and the petition for writ of error, with allowance endorsed thereon; the citation, with proof of service of same on counsel for the adverse party; a copy of the bond to the adverse party, filed with the writ of error, and the assignment of errors by the said defendants and appellants in the Supreme Court of the United States, and the prayer for reversal, with proof of service with copy of same upon counsel for the adverse party.

Also the copy of maps used upon the hearing in this court.

615 In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court, at Lansing, this fifteenth day of June, in the year of our Lord one thousand eight hundred and ninety-one.

[Seal of the Supreme Court of Michigan, Lansing.]

CHAS. C. HOPKINS,
Clerk of the Supreme Court of the State of Michigan.

(Here follow 11 maps, marked pp. 616 to 626, incl.)

Endorsed on cover: Case No. 14,693. Michigan supreme court. Term No., 198. The Grand Rapids and Indiana Railroad Company, The Continental Improvement Company, William H. Barnes, and The Philadelphia Trust, Safe Deposit & Insurance Company, plaintiffs in error, *vs.* John Butler. Filed June 19, 1891.

Office Supreme Court, U. S.
FILED.
JAN 16 1895
JAMES H. McKENNEY,
CLERK.

BRIEF FOR PLAINTIFFS IN ERROR.

Supreme Court of the United States.

OCTOBER TERM, 1894.

No. 198.

THE LAW ASSOCIATION
OF
PHILADELPHIA.

Error to the Supreme Court of the State of Michigan.

14693.

THE GRAND RAPIDS AND INDIANA RAILROAD COMPANY ET AL.,
Defendants below, Plaintiffs in Error.
vs.
JOHN BUTLER.

T. J. O'BRIEN.
Counsel for Plaintiffs in Error.

GRAND RAPIDS, MICH.,
LOOMIS & ONDERDONK, Book and Job Printers.
—1891—

IN THE

Supreme Court of the United States,

UPON WRIT OF ERROR TO THE

SUPREME COURT OF THE STATE OF MICHIGAN.

(Number 14,693. Docket No. 198. Oct. Term, 1894.)

THE GRAND RAPIDS AND INDIANA RAILROAD COMPANY, ET AL., (DEFTS. BELOW),
Plaintiffs in Error,
vs.
JOHN M. BUTLER, EXECUTOR, AND OTHERS LEGATEES, UNDER THE WILL OF JOHN BUTLER, DECEASED, (COMPLAINANT BELOW),
Defendants in Error.

Brief of T. J. O'Brien for Plaintiffs in Error.

I.

STATEMENT OF THE CASE.

1. The plaintiffs in error, on this writ, pray the reversal of the decree of the state court, that a patent of lands issued by the United States to the railroad company "was issued without jurisdiction and is void."

(The said decree was made by the Circuit Court for the County of Kent, on the 14th day of May, 1890, printed transcript, p. 373 and affirmed by the Supreme Court of the State on the 17th day of April, 1891, opinion pr. tr. 382, and 85 Mich., 246. Judgment of affirmance pr. tr., 390.)

2. The land affected by the decree is an island in the Grand River, in the State of Michigan, designated in the United States Surveys as No. 5, and now in the City of Grand Rapids, in Kent County. The first map following

page 418 pr. tr. shows approximately the situation of the island 5 and its surroundings. In fact, the north point of the island came up as far as the quarter line. The patent so decreed to be void was executed by President Grant on the 28th day of March, 1871, and conveyed to the railroad company "island No. 5 in Grand River of section 25, containing two acres and 56-100 of an acre in township 7, range 12 north of base line and west of principal meridian."

3. The claim of the defendant in error and the decree in his favor by the state courts rests upon two entries in books kept in the office of the Register of Deeds of the County of Kent:

1. In a book purporting to be a copy of the Government "Tract Book" as follows:

"Description of tract n. fr. of s. e. ¼ section 25, 7 north range 12 west.
Contents, 48 acres.
Rate per acre————.
Purchase money————.
Name of purchaser, Lucius Lyon and Erotus P. Hastings.
Number of register's return————.
Date of sale, September 25, 1832.
Number of receipt————.
Number of certificate of receiver————.
To whom patented————.
Date of patent.
Where recorded————."
(See pr. tr., page 338, folio 478.)

2. In a book of abstracts of title, as follows:

"Grantor, United States.
Grantee, Lucus Lyon and E. P. Hastings.
Liber and page, M. 450.
Date of instrument, Nov. 5, 1833.
Date of record, Sept. 26, 1849.
Consideration————.
Kind of instrument, patent.
Description, n. fr. s. e. ¼ section 25, township 7 north, range 12 west."
(See pr. tr., page 339, first line.)

4. The parcel described in these entries (north fraction of the southeast ¼ of section 25, containing 48 acres) is clearly

defined in the field notes and plats of the United States surveys. It does not include any part of island No. 5.

The Grand River at this point flows from north to south. The only survey which had been made before the sale and patent in 1832, 1833 to Lyon and Hastings was of the east bank of the river and of the lands east of the river in 1831. The government did not acquire the lands west of the river until 1836, and in 1837 the lands west of the river and the west bank of the river and the islands 1, 2, 3 and 4 were surveyed. (The facts as to the government title and surveys are fully stated further on.)

In the survey of 1831 lines of section 25 were run only east of the river. From the east line of the section to the center line would be 40 chains.

The lines were run from east line of the section (and of the township) west to the east bank of the river. The distances were:

On north line of section 25,—20.50 chains.

On south line of section 25,—44.59 chains.

(Pr. tr., p. 333-334, folio 471.)

The east and west line was not run, but the distance on that line was less than 20.50 chains.

(See courses and bearings of meander line of the east bank in section 25, pr. tr., 351, folio 496.)

The north ½ of southeast ¼ of the section would cover 80 acres, but being fractional because of the river it contained only 48 acres of land (east of the river) and this is what the government sold as appears by these entries. Pr. tr., p. 338, folio 478.

5. It is not claimed by the party who attacks the validity of the patent to the railroad company of island 5 that the island was included in the parcel described in these entries (north fraction of southeast ¼ of section 25). The claim adverse to the patent to the railroad company is that the parcel described as north fraction of southeast ¼ of section 25, being on the bank of the river, Lyon and Hastings the grantees of that parcel in the patent of 1833, took title to the middle

of the main channel of the river, including the site of island 5.

6. The claim was based by the bill and proofs upon one theory and decided by the court upon another.

The suit to annul the patent of 1871 to the railroad company was begun by John Butler, owner of part of the north fraction of southeast ¼ of section 25, in the Court of Chancery for Kent County, Michigan, by bill filed on the 9th day of September, 1887. In that bill his claim is predicated upon the allegations that in 1833 there was no island at all opposite the north fraction of southeast ¼, section 25, on the site of island 5, and, therefore, Lyon and Hastings took title to the bed of the river to the middle of the river, and that the island known as 5 was formed years after by accretions within these lines. This was denied by the answer of the railroad company, and it was averred that the island (No. 5) had been formed before and existed in 1833. The issue thus joined constituted the only issue of fact in the case. The proofs are voluminous, and were all directed to one side or the other of the contention that there was or was not an island on the site of No. 5 in 1833. This contention required the determination of two questions:

1st of fact. Whether there was an island in 1833 or not.

2nd of law. The rights of the parties upon the fact as found, that there was or was not an island in 1833.

The allegations in the bill appear in pr. tr., pages 2, 3, folios 3-5, paragraphs of bill, 3 and 4.

In paragraph 3, pages 2 and 3, it is alleged that "the easterly bank of the river was duly surveyed by the United States Surveyor in 1831. That at the time of such survey and at the time said lands were entered by Lyon and Hastings in 1832, and at the time the patent was issued therefor (in 1833), there lay opposite a portion of said lands so entered and between the middle or thread of said stream and the easterly bank thereof, a low sand-bar or piece of ground which constituted a portion of the bed of said stream; which sand-bar or piece of ground at that time and for many years after was covered with water even at low water, and was never uncovered, unless, perhaps, at a very low stage of the waters of said stream."

Further in paragraph 4, page 3, that afterwards the water of said stream, from natural causes, decreased in volume and accretions were made in said piece of ground so that said piece of ground in low water would at times be left bare, but that said piece of ground continued for many years to be covered by water and submerged during the greater part of the year.

To support these allegations John Butler was called as a witness in his own behalf and testified that he purchased and moved on to the lots in 1870; that there was then no island or bar west of a point 100 feet from Water street. That a year or so later a point of sand appeared and that it grew larger in later years. (Pr. tr., p. 118-120.) Also the witnesses Greenley, Ringuett, Berry, Rumsey, Porter and Barnes, whose testimony tended to show that there was no island on the site of No. 5. This testimony fills pages 38-149 of the pr tr. To contest the above proof the defendants offered the notes of the survey of island 5 by the government surveyor, Whelpley (pr. tr., pages 356-7), which gave the lines of the island 5 and showed "timber gone except a few trees of maple, elm, etc.," and the island "valuable for lying in the City of Grand Rapids." This was in 1855. The defendants also called Luce, Winsor and eight others, whose names appear on page 11, index, and whose testimony tended to prove that there was an island there as early as 1833. This testimony covers pages 149 to 287 of the pr. tr.

It would seem that no court upon these proofs would find that complainants' allegations were established.

The decision of the question of fact whether there was an island or not in 1833 was essential to the determination of the case made by the bill and the proofs. The court below, however, did not pass upon that question at all. It is said (page 384, folio 550) that "it is immaterial to determine what the facts are as to the condition of this land in those early days, for in my judgment, it is no consequence whether it was what might be termed "an island," a "sand-bar," or "a piece of low wet ground." The law is the same in either case. The land upon the east bank of the river was

surveyed in 1831. The east bank was meandered at the same time and so also was the west bank. (The court erred as to the very material fact in this statement as to the west bank; that bank was not meandered at all in 1831, nor until 1837. See further on this point *post.*)

It is further said (page 387, folio 554) that "when the government has surveyed its lands along the bank of a river and has sold and conveyed said lands by government subdivisions, its patent conveys the title to all islands lying between the meander lines and the middle thread of the river; unless previous to such patent it has surveyed such islands, or expressly reserves them if not surveyed."

The court further found (page 389, folio 558,) that island 5 was not reserved in the patent to Lyon and Hastings. This finding rests upon the entry relating to the patent on the Scranton Abstracts; the court holding that that entry made out a prima facie case of the contents of the patent.

The decision of the state courts expressly covers the following points:

1. That the patent from the United States to the railroad company of island 5 was issued without jurisdiction and is void. (Decree paragraph 2, pr. tr., 374, folio 530; affirmance by Supreme Court, page 391, folio 562.)

2. That the grant to Lyon and Hastings (in 1833) vested in them the title to the land in controversy (pr. tr., 388, folio 557), because,

3. That grant was made under the survey of 1831 by which *both banks* of the river were meandered and by which the middle thread of the river was fixed west of this island. (This is an error in fact. The west bank was not surveyed until 1837.)

4. The patent to Lyon and Hastings conveyed to them the title to the island unless it was expressly reserved. (Pr. tr., page 387, folio 554.)

5. The island was not reserved in the patent to Lyon and Hastings. (Paragraph 4, pr. tr., 389, folio 558.)

The state court did not decide the question of fact and law presented by the pleadings and proofs, viz, whether or not

there was an island in 1833 and the rights of the parties according to the fact.

I understand the rulings of this court to be that it will not consider these questions, and that this court will only review the points decided by the state court

The decision of the state court briefly stated is:

That the patent to the railroad company was void on the ground that the island had passed to Lyon and Hastings under the patent to them in 1833 of the "north fraction of south-east ¼ of section 25," because the island was not expressly reserved in that patent

I contend that that decision is erroneous:

1. Because that question (that there was an island in 1833 and that it was not reserved) was not before the court on the pleadings and proofs.

2. The court erred in finding as a fact upon this record that the island was not reserved.

3. The court erred in holding that the island passed to Lyon and Hastings under their patent in 1833 if not expressly reserved in that patent.

II.

Specifications of Errors Relied on.

1. The state court erred in its decree "that a certain patent heretofore issued * * * purporting to convey island No. 5 in the Grand River * * * was issued without jurisdiction and is void." (See decree, page 374, paragraph 2. 1st assignment of error, page 412.)

2. In its decree that John Butler at the time of the commencement of this suit was the owner in fee of island No. 5.

(See decree, paragraph 1, page 373. The description includes island 5. 2nd assignment of error, page 412.)

3. The matter in controversy in this suit is the title to or ownership of the island 5. The title of the railroad company under its patent and the validity of that patent are assailed by Butler under the claim that the island or the site of it passed to his grantors, Lyon and Hastings, in 1833 under a patent to them of the north fraction of the southeast ¼ of secton 25. Butler has no other title and no other claim to island 5. Therefore the matters decreed above rest upon the decision that the title to island 5 passed to Lyon and Hastings under a patent to them in 1833 of the north fraction of the southeast ¼ of section 25, and I therefore specify as the third ground of error, that: The state court erred in deciding that the title to island 5 passed to Lyon and Hasting in 1833 under a patent to them of the north fraction of the southeast ¼ of section 25. (8th assignment of error, page 413.) This decision was made on the theory that the island was not reserved in the patent to Lyon and Hastings, and therefore it passed under that patent to them. (See opinion of court, pr. tr., pages 387 and 8.)

4. The decree that the title to island 5 passed to Lyon and Hastings under their patent in 1833, that the patent to the railroad company was void and that Butler was the owner of island 5 involved and was expressly based upon the following decided points, and must stand or fall as this court shall hold them to be correct or otherwise. I contend that error was committed by the state court.

5. In deciding the case upon the theory that there was an island upon the site of No. 5 in 1833, and that it passed because not reserved in the patent to Lyon and Hastings. This theory was not properly before the court under the pleadings and proofs. (12th and 13th assignments of error.)

6. In deciding (as applicable to this case) that when the government has surveyed its lands along the bank of a river and sold and conveyed said land by government subdivisions, its patent conveys the title to all islands lying between the meander lines and the middle thread of the river unless

previous to such patent it has surveyed such islands as government subdivisions or expressly reserves them when not surveyed. (See opinion, page 387, folio 554. 6th assignment of error, page 413.)

7. In deciding that the entries in the tract and abstracts books made out a prima facie case of the *contents* of the patent to Lyon and Hastings and that the burden of proof was then shifted to the defendants to show a reservation if any were made. (Opinion, page 389, folio 558. 11th assignment of error, page 413.)

8. In deciding that "In the present case there is no act on the part of the government showing any intention to reserve this island." (Opinion, page 388. 7th assignment of error, page 413.)

9. In deciding that "The grant to Lyon and Hastings was made under the survey of 1831 by which *both banks* of Grand River were meandered and by which the middle thread of the river was fixed west of this island No. 5. (Opinion, page 388, folio 557. 8th assignment of error, page 413.)

III.

Brief of Argument.

I submit the prayer for reversal of the decree of the state court and the dismissal of the bill upon the following propositions:

I.

The point decided by the court and upon which its decision rests, i. e., that the land in quetstion was an island in 1833 and passed to Lyon and Hastings under their patent if not reserved, was not properly before the court. It was not in issue at all under the pleadings.

II.

Thecourt erred in holding as matter of fact on this record that the island was not reserved in the Lyon and Hastings patent.

III.

The court erred in holding upon this record that island 5 passed to Lyon and Hastings under the patent to them in 1833 of the north fraction of the southeast ¼ of section 25, township 7-12.

These propositions cover all the questions involved in the assignments of error relied on.

If either of these is sustained the decree of the state court that the railroad patent was void must be reversed and the bill dismissed.

IV.

Statement of Material Facts.

I

The Grand River in Michigan.

This is one of the largest rivers in the state. It flows from a point east of Lansing, the capital of the state, through the capital and thence in a generally western direction to Lake Michigan at Grand Haven. Passing through township No. 7-12 in the County of Kent it turns and flows to the south about five miles, and then turns to the west again. (See third map following page 418.)

The divisions of the large tracts of territory on either side of it are designated generally as the territory north of the river and the territory south of the river, but the lands in township 7-12 which form part of the large northern division of territory are *west* of the river as it runs in that locality. Therefore north bank should at the place in question be read west bank.

II.

The Indian title to lands in Michigan.

The title of the Indians to the territory north and south of the Grand River was recognized by the government of the United States and was acquired by the government by treaties with the Indians at different times.

July 4, 1805, a treaty was made between the United States and the Ottawas, Chippewas, Potowatomies and other nations (7 U. S. Stat. 87) whereby it was stipulated that the boundary line between the United States and the nations aforesaid shall in future be a meridian line drawn north and south through a boundary on the south shore of Lake Erie 120 miles west of the west boundary line of Pennsylvania, and the Indian nations, parties to the treaty, ceded to the United States all east of that line.

III.

Acquisition by the government of the lands north and south of the Grand River in Michigan.

The government did not acquire the lands north of the

Grand River (the west bank at the place in controversy) until 1836, five years after the survey of 1831 and three years after the patent to Lyon and Hastings, under which the complaint claims in this case.

On the 28th day of March, 1836, a treaty was made between the United States and the Ottawa and Chippewa nations of Indians: (See 7 U. S. Stat. 491.)

By this treaty the Indians named ceded to the government all the Lower Peninsula of Michigan north of the Grand River, also part of the Upper Peninsula, excepting certain reservations on Traverse Bay and in other localities further north. The first article of the treaty reads as follows:

"The Ottawa and Chippewa nations of Indians cede to the United States all the tract of country within the following boundaries, beginning at the mouth of Grand River, of Lake Michigan on the north bank thereof, and following up the same to the line called for in the first article of the treaty of Chicago on the 29th of August, 1821 (see 7 U. S. Stat. 218; this line is east of the line in quetsion in this suit) thence in a direct line to the head of Thunder Bay, thence * * * to the mouth of said river, thence northeast to the boundary line in Lake Huron between the United States and the Province of Upper Canada. Thence northwesterly following the same line * * * through the Straits and River St. Mary's to a point in Lake Superior, thence * * * (lines westerly and southerly) "to a point in Lake Michigan west of the North Cape or entrance of Grand River and thence east to the place of beginning; comprehending all the lands and islands within these limits not hereinafter reserved."

(In 1837, one year after the above treaty, the government surveyed the north bank of the river, being the west bank at the locaiton in question, the islands in the river and the lands west of the river.)

The government had under earlier treaties acquired the lands south of the Grand River.

IV.

Surveys by the Government.

Three surveys affecting the lands in question and sur rounding territory were made (the evidence of these surveys is found in certified transcripts of field notes and accompanying maps):

1st. In 1831, of the south (at this place east) bank of the river and lands east of the river, by Lucius Lyon, deputy surveyor.

2d. In 1837, of the north (at this place west) bank of the river and lands west of the river and islands 1, 2, 3 and 4 in the river, by R. Whitcomb, deputy surveyor.

3d. In 1855, of islands in the Grand River and other waters in Michigan, including island No. 5, in section 25, by Thomas Whelpley.

See his certificate (page 356) dated February 16, 1856, that in pursuance of the instructions of the surveyor general of the United States, dated May 24, 1854, "I have surveyed the islands in Pleasant Lake, Skifts Lake and Grand River in Michigan," and his further certificate (page 357) dated March 7, 1857, that in pursuance of the instructions of the surveyor general he had surveyed the islands in the Lower Peninsula of Michigan.

Field notes and maps of U. S. survey.

There are two sets of certified transcripts of these field notes. The first was introduced by the complainant and comprises chapter 1 of the documentary evidence in the record (pr. tr., 332-338). This was obtained at the office of the Commissioner of the State Land Office of the State of Michigan.

The second was introduced by the defendants and comprises chapter 5, documentary evidence (pr. tr., 350-357). This was obtained at the United States General Land Office, Washington.

These are not identical, each covers some notes not found in the other. Together they show quite fully the action relating to the surveys in townships 7-12, affecting section 25, the premises in dispute and the surrounding lands.

There are 5 maps based on these surveys: One from State Land Office of sections 25 and 36 (1st after page 418,

pr. tr.) Four from the United States Land Office, viz: One of the river, and township 7 west of the river, certified Oct. 30, 1838. One of the lands southeast of the river, certified Feb. 2, 1832. Another of same, certified July 7, 1831, and one of island 5, certified July 24, 1856. These four maps are the 3d, 4th 5th and 6th in order following page 418, pr. tr.

The survey in 1831 of the east (south) bank of the river and lands east of the river.

1. This survey in 1831 was made by Lucius Lyon. In his certificate dated April 29, 1831 (see pr. tr., page 351), he states that "In pursuance of contract with and instructions from the Surveyor General of the United States have laid out and subdivided *a fraction of town 7, north of range 12 west, south and east of Grand River, Michigan Territory*, and I certify that the foregoing are the true field notes of said subdivisions."

2. Extracts from these field notes are found in chapter 5, also in chapter 1.

In chapter 5 (pr. tr., pages 350-1), "Meanders of Grand River up stream on left bank" (this is the south bank and through section 25, the *east* bank). The line here given is of the east bank of the river through the entire township. Beginning in section 34 it runs north through the eastern tier of sections 36, 25, 24, 13, 12, 1, ending in 1. In the courses through section 25 we find that the south line of section 25 ("fraction corner between sections 25 and 36") is "opposite the foot of an island." This is island No. 3, and with the fourth course is the statement "at 8 chains opposite head of island." This is head of the long island No. 3.

With the next course is the note "at 5 chains opposite foot of another island." This is 7 chains north of the head of island last stated above. This seems to mean island 5, as the foot of islands 1 and 2 are north of the ¼ line and more than 7 chains from the head of island 3.

The notes of part of this line (through sections 36 and 25) also appear in chapter 1, pr. tr., page 336.

3. The lines of sections 25 and 36 east of the river. The river turns from south to west in section 36. Therefore the south line of section 36 does not touch the river at all. We find the first line in the field notes to be the south side of section 36, from east to west, 80 chains, surveyed in 1831 by L. Lyon (pr. tr., page 332).

Then follows the east line of sections 36 and 25, beginning at the southeast corner of 36 and running north 80 chains to post at corner of sections 25 and 36, thence north 80 chains to post at corner sections 24 and 25. "Surveyed Feb. 24, 1831, by J. Mullett, D. S., for L. Lyon, D. S" (pr. tr., 333). Then follows "subdivisions," surveyed by L. Lyon, deputy surveyor, April 29, 1831. (See pages 333 and 334, pr. tr.)

1st. The west line of section 36, south of the river, viz: "Between sections 35 and 36." This is the west line of 36. It is run from southwest corner of section 36 north 58.85 chains to the river (pr. tr., 333).

2nd. South line of section 25 east of the rver, viz: "Between sections 25 and 36." This is the south line of 25. It runs from the east line of the section 44.59 chains to the river (see pr. tr., 333).

3rd. North line of section 25 east of the river, viz: "Between sections 24 and 25." This is the north line of 25. It runs from the east line of the section 20.50 chains to the river (pr. tr., 334).

NOTE AND CAUTION.—The above are the *only surveys made in 1831.* The transcript of field notes introduced by complainant are mixed up and misleading.

The transcript of field notes constituting complainants Exhibit A, documents, chapter 1 (pr. tr., 332-338), are made up of notes under the heading "Field notes of United States survey of sections 25 and 36, township 7 north, range 12 west," in the following order: 1st. Of the south line of section 36 by L. Lyon in 1831, page 332. 2nd. Of the east line sections 36 and 25, by J. Mullett, D. S.. for L. Lyon, D. S., February 24, 1831, page 333. 3d. Subdivisions, viz: West line 36 and line between 25 and 36 (south

line 25), and line between 24 and 25 (north line 25), by L. Lyon, April 29, 1831, pages 333-334.

Then follow under the heading "fraction north of Grand River" notes of the lines of sections 25 and 36, west of the east bank of the river, signed R. Whitcomb, D. S. (without any date here), pages 334-5, and then under "meanders of Grand River" the notes of survey of the west bank of the river ("right bank down stream") signed, R. Whitcomb, D. S. (without date), page 335. Then on page 336 meander of left bank (east bank), L. Lyon, April , 1831.

The above surveys by Whitcomb, pages 334, 335, were, however, *made in 1837 and not in 1831*, as the arrangement of the field notes in this chapter 1 would make it appear. This is a *material* point. See Whitcomb's certificate, page 355, pr. record, and full statement of this point *post*. *All surveys by Whitcomb were in 1837.*

Then follow on pages 336-338 notes of the surveys of islands Nos. 1, 2, 3 and 4, over the signature of R. Whitcomb, and date Aug. 24, 1837, page 338. This signature and date covers all the field notes in this chapter 1, beginning with "fract. north of Grand River," page 334, line 9, pr. tr., to page 338, excepting the extracts interpolated from Lyons' notes of survey of east bank in 1831 (page 336).

Survey of the river, the islands in the river, the west bank of the river and lands west of the river in 1837. These surveys were made by R. Whitcomb. His certificate appears in chapter 5 (pr. record, page 355), dated September 20, 1837. He therein states that in pursuance of a contract with the Surveyor General of the United States, bearing date June 22, 1837, he had "surveyed and divided into sections town No. 7 in range No. 12 west, in the State of Michigan."

His survey covered the lines of sections 25 and 26, west of the *east* bank from the points where Lyon's survey in 1831 of those lines ended; and the islands 1, 2, 3 and 4 in the river, and the west bank of the river and the section lines west of the river.

1st. Survey of west bank of the river (pr. record, pages

352, 353). This begins in section 1, and runs south, ending in section 34, at the south boundary of the township. This line through section 25 appears on pages 352, 353, pr. record. Among the notes of the line in section 25 are the following, with the second course, "to tree head of isle No. 1 Grand Rapids;" with the fourth course "a sycamore bush head of isle No. 2, August 22, 1837." (P. 353, lines 1, 2.) The last note is "To south boundary August 23, width of river 8 chains." (P. 353, last line.) The part of the field notes of this survey through sections 25 and 36 appear in chapter 1, pr. record, page 335.

2d. Survey of islands Nos. 1 and 2. These islands lay in section 25 north of the east and west quarter line. The notes of surveys of these islands is found in chapter 5, on page 354, pr. record, also in chapter 1, pr. record, pages 336, 337.

3d. Survey of island No. 3. This lies in the river in section 25, south of island No. 5. This line was run beginning at a post on the lower end of the island, thence along the east and north and west lines of the island in the order stated. (See chapter 5, pr. record, pages 354, 355, also chapter 1, pr. record, page 337.)

4th. Survey of "an isle in Grand River." This is the island designated as No. 4. It lies in section 36. Line of survey begins at post in line between sections 35 and 36 and runs thence along the easterly, northerly and westerly sides of the island back to the place of beginning. (Pr. tr., page 355, also pages 337-338.) The last note in this survey is "to beginning August 24, 1837."

The dates in these notes show when the work of surveying the west bank and the islands was done. The west river line was run through section 25, August 22, 1837, and completed at the south boundary August 23. The survey of the islands was completed on the 24th day of August, 1837. (See notes in chapter 5, pr. record, pages 352-55.)

5th. Survey of the lines of sections 25 and 36 *west* of the *east* bank of the river. The notes of these surveys appear

in chapter 1 (pr. record, pages 334, 335), under the heading "fraction north of Grand River."

The first line is the west line of section 36. The place of beginning is at a post on the south side of the river 58.85 chains north of township line. This is the point where Lyon in 1831 left the survey of this line. Lyon's survey of the west line of section 36 began at the south line of the section and ran north 58.85 chains to Grand River (see above and pr. record, page 333). The south side of the river here is the same as the east side further up stream in section 25. The river here runs to the west. This line, run in 1837 by Whitcomb, starting at the post on the south bank of the river 58.85 chains north of town line ran across the river passingthrough an island (No. 4) 10.41 chains to the right bank of Grand River. This is the north (west) bank and was thence continued north to a point 80 chains from south line of township, where was set a post at the corner of sections 25, 26, 35 and 36 (pr. tr., 334).

The second line run was between sections 25 and 36. This is the south line of 25 (pr. tr., 334). Starting at the section corners on west lines of the sections this line is run east to the east line of the river. (See notes pr. tr., 334).

The third line run was the west line of section 25. The notes show a line "between sections 25 and 26 running north 80 chains, to a point where was set a post marking the corners of sections 23, 24, 25 and 26 (pr. tr., page 334).

The fourth line run was the north line of section 25. Starting at the west section corners of 24 and 25 it was run east to the east bank of the river. At 45.70 chains the right (west) bank of the river was reached. It was thence continued over the river to a point 58.55 chains, showing the river to be 12.85 chains wide. Then follow the notes of a correction line of this same section line (between 24 and 25). It is run back west across the river 12.85 chains to the right bank of the river, thence west (pr. tr., 334).

The notes of these lines of the fraction north of Grand River were signed R. Withcomb, D. S., without any date

on page 334; but the date is supplied by his certificate referred to above. (See pr. tr., 355.)

Survey in 1855 of islands in the lower peninsula of Michigan, in certain lakes and the Grand River, and covering island 5 in Grand River.

These surveys were made by Thomas Whelpley, deputy surveyor. His certificates are in pr. record, pages 356, 357. The first is dated February 16, 1856. Therein he states that in pursuance of the insrtuctions of the Surveyor General of the United States, dated May 24, 1854, he had 'surveyed the islands in Pleasant Lake, Skifts Lake and Grand River in Michigan, described in the foregoing field notes." There is a further certificate dated March 7, 1857, in which he certifies that in pursuance of the instructions of Surveyor General he had "surveyed the islands in the Lower Peninsula of Michigan in the foregoing described."

The field notes of the survey of island 5, the land in dispute, appear in chapter 5, pr. record, page 356. The boundary line of the island as surveyed began at the quarter post on the east line of the township (east side of section 25), thence west 24 chains to the left (east) bank of Grand River, thence 4.02 chains across water by triangulation to east side of island, thence north to the north side of the island, thence west and south around the island, then east and north back to the point of beginning.

There is the following note, "Timber gone except a few trees of maple, elm, etc., soil sandy-alluvian; quality, second rate; valuable for lying in the City of Grand Rapids."

The field notes of this survey were also introduced by complainant and appear as part of chapter 1, pr. record, page 338.

By this copy it appears that the survey was made in September, 1855, and that the island contained 2.56 acres.

V.

Statement in chronological order of surveys, conveyances, etc., affecting title to lands involved in the present suit.

1831.

April 29, survey by Lucius Lyon, deputy surveyor, of the east bank of the Grand River and the fraction of township 7, east of the river. (See full statement of this survey ante.)

September 19th sale by the government to Louis Campau of east fraction of northeast quarter section 25, 72 acres. (*Note*, islands afterwards surveyed and numbered 1 and 2 lay opposite this parcel.) (See pr. record, page 349.)

1832.

September 25th sale by the government of the north fraction of southeast quarter of section 25, containing 48 acres to Lucius Lyon and Erotus P. Hastings. (See pr. record, page 338.) (*Note*. The north part of the island afterwards surveyed in 1837 and numbered 3 lay opposite this parcel. All of island 5 lay opposite this parcel, excepting a small part of the north end of the island. The island ran north of the quarter line. *Lucius Lyon, one of the purchasers, was the same who surveyed the lands east of the river in 1831.*

September 25th sale by the government to Henry L. Ellsworth of the south fraction of the southeast quarter of section 25, containing 72 acres. (Pr. record, page 349.)

(*Note*. The largest of the islands afterwards surveyed in 1837 and numbered 3 lay opposite this parcel, excepting the north part of the island, which lay oppostie the north fraction of the southeast quarter as stated above.)

1833.

November 5th. This is the date of a patent from the United States to Lucius Lyon and E. P. Hastings. The only evidence in the case of such a patent, or of its contents is the entry in the abstract book pr. record, page 339.

The entire entry is as follows: "Grantor United States, grantee Lucius Lyon and E. P. Hastings; Liber M, page 450; date of instrument Nov. 5, 1833. Date of record Sept. 26, 1849. Con's—Kind of ins't, patent; description, n. fr. s. e. ¼ sec. 25, T. 7, n. R. 12 w."

This is the patent under which the complainant now claims

title to island No. 5. If he has any title, it is because the title to the island passed to Lyon and Hastings under this patent. It passed then or never to any grantor of the complainant. I have already stated that Lucius Lyon here named was the same man who surveyed the east bank and the fraction east of the river in 1831.

1834.

April 24th. Deed from Lyon and Hastings to C. C. Trowbridge of an undivided two-thirds of the north fraction of the southeast quarter of section 25, township 7, 12, containing 48 acres. (Pr. record, page 110.)

May 6th. Deed from Hastings to Lyon of the "undivided one-third part of two lots of land lying at the falls of Grand River in the said territory, known and described as follows, i. e.: The east fraction of section 24 in town 7 north, range 12 west, containing 135 acres, and the north fraction of the southeast ¼ of section 25 in town 7 north, range 12 west, containing 48 acres. (See pr. record, page 112, at folio 171, and description on page 341, at folio 482.)

May 26th. Deed from Lucius Lyon to Arthur Bronson of the "undivided 1-6 part of the east fraction of section 24, and the undivided half of the north half or part of the east fraction of the northeast ¼ of section 25. Said north half or part containing about 36 acres, and the equal undivided 1-6 part of the north half of the southeast fraction No. 25, the whole of said north half containing 48 acres, be the same more or less according to the published surveys of the lands of the United States, being all in town 7 north, of range No. 12 west." (Pr. record, page 111, folio 169.)

1835.

July 6th. C. C. Trowbridge conveyed to N. O. Sargent an undivided ¾ of his undivided ⅔ of the north fraction of the southeast ¼ of section 25, containing 48 acres. (Pr. tr., page 111.)

July 20th. Trowbridge conveyed to Drury Fairbanks his remaining undivided ¼ of the undivided ⅔ of the same description. (Pr. record, page 111.)

December 4th. Arthur Bronson reconveyed to Lyon the undivided 1-6 of the same description, in section 25, which Lyon had conveyed to him May 26th 1834. (Pr. record page 111.)

1836.

Januray 21st. Deed from Lucius Lyon to N. O. Sargent of "the equal undivided 1-6 part of the north half of the southeast fraction of section 25, town 7-12, containing 48 acres." (Pr. record page 112, folio 170.)

February 24th. Sargent conveyed to Lyon the undivided 3-12 part "of the north fraction of the southeast ¼ of section 25, town 7-12, containing 48 acres." (Pr. record page 111.)

February 24th, the same day there was a further conveyance by Drury Fairbanks to Lyon of the undivided 1-12 of the same description. (Pr. record page 112, folio 170.)

March 28th. This is the date of the treaty herein before referred to (7 U. S. Stat. 491) between the United States and the Ottawas and Chippewas by which the government acquired the lands north and west of the Grand River. (See article 1.)

May —. Deed from Fairbanks to Sargent of the undivided ¼ of the undivided ⅓ of the north fractional half of the southeast quarter (s. e. ¼), section 25. (Pr. record, page 112, folio 171.)

July 25th. Deed from N. O. Sargent to Charles H. Carroll of the undivided half of north fraction, southeast ¼ section 25, excepting 15 lots sold Backus and like number to be to N. O. Sargent. See misc. records, page 1, for certain agreements. (Pr. record, page 112, folio 171 and page 339.)

1837.

In this year the government surveyed everything *west* of the *east bank* of the river. The facts as to this survey have been herein before fully stated. It was made by R. Whitcomb, deputy surveyor. His certificate to the field notes is dated September 20, 1837, and states that the survey was made under contract with the Surveyor General, dated June 22, 1837. The dates running through the field notes show

that the surveys were made in August, 1837. Whitcomb surveyed the west bank of the river through entire township 7. He surveyed the east and west section lines of section 36-25, etc., west from the points on the east bank of the river where Lyon had left them when he surveyed the lands *east* of the river in 1831. Whitcomb surveyed these lines from the east bank of the river west across the river, and thence to the west lines of the section. He also surveyed islands 1, 2 and 3 in section 25, and island 4 in section 36. He also surveyed the entire township 7 west of the river. See more full statement above. (Pr. tr., pages 352-355.)

1839.

August 3rd the government sold island No. 3 to Richard Godfroy. (Pr. record, pages 349-350.)

August 13th the government sold island No. 4 to Aaron B. Russell. (Pr. record, page 350.)

1841.

August 10th the government sold islands 1 and 2 to Louis Campau. (Pr record, page 349.) He had purchased the east fraction of northeast ¼ section 25, opposite which these lay, on September 19, 1831.

August 10th the government gave a patent of island No. 3 to Richard Godfroy. (Pr. record, pages 349, 350.)

August 25th the government gave a patent of island 4 to Russell. (Pr. record, page 350.)

1844.

October 2nd. Charles H. Carroll deeded to the administrator of Sargent "all his interest in undivided half of north fraction of southeast ¼." (Pr. tr., page 112, folio 171.)

1848.

January 11th the administrator of Sargent conveyed to James M. Nelson an undivided half of land between Water street and the Grand River. (Pr. record, page 112, at folio 172.)

1849.

March 26th. Lyon to George Thayer general assignment

of all property in Grand Rapids. (Pr. record, page 113, folio 173, and page 339.)

1852.

March 13th. Deed James M. Nelson to Daniel Ball, undivided 1-12 of land lying south of ¼ line and west of Water street. (Pr. record, page 112, folio 172.)

1853.

November 29th. Deed from James M. Nelson and wife to Daniel Ball. This deed is printed in full. (Pr. record, pages 341, 342.) It conveys "11-12 of an undivided ½ of all the lands lying between Water street and Grand River, in the Town of Grand Rapids.

1854.

January 25th. Deed from George W. Thayer to Daniel Ball of "all the lands, tenements, hereditaments lately belonging to Lucius Lyon situated in the village, now City of Grand Rapids." (Pr. record, page 113.)

1866.

November 8th. Deed from Daniel Ball and wife to Byron D. Ball, of "that strip of land lying on the east bank of Grand River and west of Water and Waterloo streets, bounded on the south by the Ellsworth plat, so-called, and on the north by the north line of Fulton street were the same drawn westerly to Grand River. Said parcel being upon the Kent plat of said city. This deed is printed in full. (Pr. tr., pages 342, 343.)

1869.

March 11th. Byron D. Ball and wife conveyed to Dennis W. Bryan "all that strip of land lying on the east bank of Grand River and west of Water street, bounded on the north by center line of Fulton street, were the same continued westward to Grand River, and on the south by a line parallel with said north line and 500 feet northerly from the north line of Cherry or Ellsworth street, all on and according to the Kent plat of said city, intending hereby to convey all of that strip of land between Water street and Grand River,

except 500 feet off from the south end thereof. (See this deed in full. Pr. record, pages 344, 345.)

On the 2nd day of October, 1869, there was recorded in the office of the Register of Deeds for Kent County a map and survey of a plat of land designated as Byran & Ball's sub-division. The statement or survey with this plat is found in full in the pr. record, page 114. The statement is, "Dennis W. Bryan and Mary E. Bryan, his wife, who executed this plat as proprietors of lots Nos. 1 to 17 inclusive, and Byron D. Ball and Martha M. Ball, his wife, who executed this plat as proprietors of lots 18 to 27 inclusive (*Note a:* Lots 1 to 17 are the north part of the plat. The lots are numbered 1-2, etc., in order, running from Fulton street south.) do hereby certify that the said sub-division has been laid out and surveyed * * * bounded on the north by the center line of Fulton street produced; on the east by the west line of Water street; on the south by the north line of Cherry street produced, and on the west by the middle of the channel of Grand River * * * the easterly and westerly lines of all the lots are made at right angles with the west line of Water street, and extended westerly to the middle of the channel of Grand River."

(*Note b:* There were at this time two channels in the Grand River. The narrower and deeper one east of the islands, and the broader channel west of the islands. The plat does not state which channel is meant, and the map with the plat does not show the islands at all. If the middle of the west channel was meant, these lines of the lots ran across island 3 and island 5.)

1870.

March 23d. Bryan deeded lot 8, Bryan & Ball sub-division, to John Gezon. (Pr. record, page 115.)

March 25th. Bryan deeded to John Butler (the complainant in this case) lot 5, Bryan & Ball's sub-division. (Pr. tr., page 115.)

1871.

March 28th. The United States gave patent of island 5 to the State of Michigan for the use of the Grand Rapids &

Indiana Railroad Company. These lands accrued to the company under the Acts of June 3, 1856, and June 7, 1864, and by the construction of the railroad on this part of the line in 1868. Selections were made of lands in 1869 and 1870. (See recitals in the patent, chapter 3. Pr. record, pages 348, 349, and Governor's certificate, pages 371-372.)

June 15th. Bryan deeded to John Bole the north half of lot 13. (Pr. record, page 115.)

1873.

March 21st. Bryan deeded to John Butler, the complainant, lots 6, 7 and 9. This deed is printed in full, pages 345-346.

June 10th. Gezon deeded to Butler lot 8. This deed is printed in full, page 346-347.

In this year the legislature of Michigan passed an act subjecting railroad lands to taxation.

1874.

April. Under the Michigan law of 1873 island 5 was placed on the tax rolls of the City of Grand Rapids for taxation as the property of the Grand Rapids & Indiana Railroad Company, and the railroad company paid said county and state taxes on this island in 1874 and every year there after. (See tax receipts in chapter 12. Pr. tr., pages 364-371.)

The taxes paid were as follows:

1874,	$15 54.
1875,	25 90.
1876,	33 88.
1877,	37 34.
1878,	36 73.
1879,	40 87.
1880,	36 50.
1881,	40 24.
1882,	41 80.
1883,	45 34.
1884,	44.72.

1885, 54 49.
1886, 44 08.
1887, 57 20.
1888, 60 63.
1889, 66 12.

September 21st the north half of lot 13 was deeded to John Butler by commissioner under chancery sale. (Pr. tr., 116.)

1883-1885.

September 8th, 1883, the City of Grand Rapids instituted proceedings to condemn lands for the opening and extension of Fulton street from Waterloo street west to the river. The proceedings in this matter fully appear in chapter 11 of Documents. (Pr. record, pages 358-364.)

Among the parcels sought to be condemned was one designated as the 4th parcel and described as a certain part of island No. 5 in the Grand River, owned by the Grand Rapids & Indiana Railroad Company. This land was condemned and $25 awarded to the railroad company as the owner.

In 1885 the cost of opening the street was assessed on a special tax roll upon lands within a local district. On this roll the complainant, John Butler, was assessed the sum of $110 as the owner of lots 5, 6, 7, 8 and 9, and the north half of 13.

Bryan & Ball's sub-division and the Grand Rapids & Indiana Railroad Company was assessed the sum of $850 as the owner of "island No. 5 in Grand River." These taxes were paid by Butler on his lot and by the company on island 5. (Pr. tr., page 363.) The amount paid by the company, tax and collection fee, was $884. (See receipt, dated August 5, 1885. Pr. record, page 371.)

A notice of the assessment was given by published notice, which contained the names of all the persons assessed.

1885.

July 30th the railroad company paid a tax of $53.34, as-

sessed against it by the city for building sidewalk on Fulton street in front of island No. 5. (See pr. record, page 370.)

1886.

June 8th the railroad company paid a tax of $55 assessed against it as owner of island No. 5 for part of the expense of grading Waterloo street from Fulton street south to Cherry. (Pr. tr., page 371.)

1887.

September 9th. The present suit was begun by Butler by bill filed in the Circuit Court for the County of Kent, in chancery.

ARGUMENT.

I.

THE POINT DECIDED BY THE COURT BELOW AND UPON WHICH ITS DECISION RESTS, VIZ: THAT THE LAND IN QUESTION WAS AN ISLAND IN 1833 AND PASSED TO LYON AND HASTINGS UNDER THEIR PATENT IF NOT THEREIN RESERVED, WAS NOT PROPERLY BEFORE THE COURT. IT WAS NOT IN ISSUE AT ALL UNDER THE PLEADINGS.

I rest this proposition upon a rule well established by the decisions of this court, that while courts of equity have power to set aside or cancel patents or other evidences of title obtained from the United States by fraud or mistake, it can only be exercised on specific averments of the mistake or fraud supported by clear and satisfactory proof. The allegations must be clearly stated and fully proved.

121 U. S., 325, the Maxwell Land Grant case.

125 U. S., 273, United States vs. The San Jacinto Tin Co.

The averments in the bill in this case I have already quoted. They appear in the printed record on pages 2 and 3, folios 3, 4, and 5 (paragraphs 3 and 4 of the bill). In substance the allegation is that at the time of the survey in 1831 and of the sale to Lyon and Hastings in 1832, and of the patent to them in 1833 of the north fraction of the south-east, ¼ of section 25, there lay opposite a portion of said land a low sand-bar which constituted a portion of the bed of said stream, which at that time and for some years after, was covered with water, even at low water; and that afterwards the waters of the stream decrease in volume from natural causes and accretions were made to said piece of ground so that in low water it would at times be left bare, but that it continued for many years and long after the island was surveyed (1855) to be covered by water and submerged during the greater part of the year. This averment attacked the truth of the facts stated by the United Sta tes Surveyor in his notes of the surveys in 1855.

The denial of these allegations by the answer, made the principal issue of fact in the case and nearly all the proofs

in the case bear upon one side or the other of the issue thus presented. Nevertheless the state court decided that it was entirely immaterial what the condition of the land was in the early days, and then proceeded to dispose of the case upon the theory that it was an island in 1831 and was not reserved in the patent to Lyon and Hastings, and therefore it passed to them.

I submit that the court to properly decide this case, should have determined it upon the issue presented by the pleadings and the proofs, and that in deciding it upon the theory which it did, the court decided the case upon a point not properly before it.

The allegation that there was no island there and that the disputed ground was formed by accretions many years after (even later than the survey in 1855), is very distinct from the allegations that there was an island there in 1831 and that it was not reserved in the patent to Lyon and Hastings, and therefore passed under that patent. The cases resting upon such allegations would be distinctly and substantially different. If this bill had alleged that there was an island and that it was not reserved, very different proofs would be required. It is safe to say that the proofs on such an issue would not cover more than twenty pages of this record; whereas we find in this transcript proofs covering more than two hundred pages of the printed record directed to the question whether or not there was an island in 1832 and 1833. These proofs while proper under the issue actually presented by the bill that there was no island in those years are wholly useless and immaterial, and would not be received nor considered upon the question decided by the court that there was an island and that it was not reserved, and therefore passed to plainiff's grantors.

The state court might just as properly have decided upon this record that the complainant or his grantors had acquired this land under an earlier grant from the government of France or Spain or England, as to say that they had acquired it from the government of the United States on such a theory as this, in view of the pleadings and proofs in the case.

II.

THE COURT ERRED IN HOLDING AS MATTER OF FACT ON THIS RECORD THAT THE ISLAND WAS NOT RESERVED IN THE LYON AND HASTINGS PATENT.

1. If the first proposition, argued above, shall be overruled and this court shall hold that the case was before the court below to be determined on the theory that there was an island in 1833 and that it was not reserved in the patent to Lyon and Hastings, and therefore passed to them under their patent in that year, a question of evidence is presented.

2. The certificate of the trial judge who heard the proofs, shows that all the evidence appears in the transcript (pr. tr., 38, 1st par.)

The court below must necessarily have found as matter of fact that the island was not reserved in the patent to Lyon and Hastings.

3. The court did expressly so find. (See page 389, folio 558, par. 4.)

The court having referred to the entry on the abstract book, said "We think the complainant made out a *prima facie* case of the contents of the patent and that the burden of proof was shifted to the defendants to show a reservation if any were made."

4. The court erred in making this finding upon this record for the reasons. (*a*) The pleadings raised no such question. (*b*) In producing the proofs no such question was in issue and the proofs were not directed to this point. (*c*) It was error to hold that there was sufficient evidence on this point in the record to overcome the defendants' patent.

5. This court has in many decisions given to patents a force which cannot be overcome by any such evidence as is found in this record.

I quote some of these decisions:

9 Cranch 98, decided in 1815; opinion given by Chief Justice Marshall: "The laws for the sale of public lands provide many guards to secure the regularity of grants. * * * Officers are appointed to superintend the business and rules are framed prescribing their duties. * * *

When the proceedings are completed by a patent, a compliance with these rules is presupposed. That every prerequisite has been performd is an inference properly deducible."

9 Cranch 178, "All lands are supposed to be actually surveyed and the intention of the grant is to convey the land according to the actual survey."

9 Peters 134, "A grant made by that officer who is by law authorized to make it, carries with it *prima facie* evidence that it is within his power."

13 Peters 451, "The entry (of land) can only come in aid of a legal title, and is no evidence of such title standing alone opposed to a patent for the same land. The States have no power to declare certificates of purchase of equal dignity with the patents. Congress alone can give them such effect."

18 Howard 88, "The presumption is that the patent is valid, and furthermore it is *prima facie* evidence of itself that all the incipient steps had been regularly taken."

116 U. S., 48-49, "The patent having been issued by officers of the Land Department, to whose supervision and control are intrusted the various proceedings required for alienation of the public lands, all reasonable presumptions are indulged in support of their action."

121 U. S. p. 379, "Deliberate action of the tribunals to which the law commits the determination of all preliminary questions and the control of the processes by which this evidence of the title is issued to the grantee demands that to annul such an instrument and destroy the title claimed under it, the facts on which this action is asked for must be clearly established by evidence."

Further, on page 381, "We take the general doctrine to be that when in a court of equity it is proposed to set aside, to annul or to correct a written instrument for fraud or mistake in the execution of the instrument itself the testimony on which this is done must be clear, unequivocal and convincing and that it can not be done upon a bare preponderance of evidence which leaves the issue in doubt. If the propo-

sition thus laid down is sound in regard to the ordinary contracts of private individuals, how much more should it be observed where the attempt is to annul the grants, patents and other solemn evidences of title emanating from the government of the United States under its official seal. In this class of cases the respect due to a patent, the presumptions that all the preceding steps required by the law had been observed before its issue the immense importance and necessity of the stability of titles dependent on these official instruments *demand that the effort to* set them aside, to *annul them*, or to correct mistakes in them, should only be successful when the *allegations on which this is attempted are clearly stated and fully sustained by proofs.*"

123 U. S. 316. "The case in 121 U. S. 379-381 is referred to and the opinion on these pages quoted. Following the quotation the opinion proceeds, page 317:" "It thus appears that the title of the defendants rests upon the strongest presumptions of fact, which although they may be rebutted, nevertheless can be overthrown only by full proofs to the contrary, clear, convincing and unambiguous. The burden of producing these proofs and establishing the conclusion to which they are directed rests upon the government (in a suit by it to cancel a patent of lands). Neither is it relieved by the negative nature of the proposition it is bound to establish."

125 U. S. 300. The court reaffirms the doctrine, stated in 121 U. S., in regard to the character of the testimony necessary to set aside such a solemn instrument as a patent of the United States, and quotes from the opinion on page 381 in that volume.

128 U. S. 676. "The presumption attending the patent even when directly assailed * * * can only be overcome by clear and convincing proofs."

139 U.S. 524. The defendant in this case claimed the land in question under a patent from the United States. The plaintiff claimed that the land was mineral land and passed to him under a patent for a mining claim. It was contended

that the lands were mineral lands and did not under certain acts of congress pass under the patent to the defendant.

Referring to the exception of mineral lands from grants in the acts of congress it is said, page 524, "The grant or patent when issued would thus be held to carry with it the determination of the proper authorities that the land patented was not subject to the exception stated." That is, that it was not mineral land.

6. The patent to the railroad company in the case at bar draws to itself all presumptions of fact necessary to its validity. If the law is that this island 5 passed to the grantees of the land on the east bank under their patent in 1833, if not therein reserved, the patent to the railroad company carries with it the presumption that it *was* so reserved.

7. The burden is on the party attacking the patent of the railroad company to show that it was not reserved and the burden never could be shifted to the defendant to support the validity of its patent, that is to show that the island was reserved. Complainant must have shown by a preponderance of proof that the island was not reserved, and the question simply is, whether upon this record the complainant did produce evidence sufficient to overcome the validity of the patent to the railroad company.

8. I submit that he did not.

9. The evidence of the contents of the patent to Lyon and Hastings would be: first, the patent itself; second, the record of the patent in the United States Land Office. (96 U. S. 318-319, 4 Mich., 150.)

The original patent to Lyon and Hastings was not produced and was not accounted for. No certified transcript of the record of the patent from the United States Land Office was produced.

In fact the question of the contents of the patent was not thought of at all on the trial and taking of proofs, and complainant put in his proofs on the theory that the north fraction of the northeast quarter of section 25 was granted by the United States to his grantees and that they thereby acquired the site of the island, because there was no island

there at that time, nor for years thereafter; and the entry in the abtsract book was only introduced as a necessary link in complainant's chain of title to the north fraction of the southeast quarter of section 25.

The State Court having adopted the theory of the case upon which they decided it, found in this entry sufficient evidence of the contents of the patent to Lyon and Hastings to overcome the presumption attaching to the defendants patent and to shift the burden to the defendants.

10. The finding of the court that the island was not reserved rests solely and entirely upon the entry in the Scranton abstract. That entry appears in full, (pr. tr., 339, and in this brief page 2, paragraph 3, section 2.) That is the only testimony in the case upon the subject of the patent to Lyon and Hastings.

11. That entry is not on its face evidence of the contents of the patent to Lyon and Hastings. It is not by any law given the force of evidence of the contents of that patent.

A. Certainly not by any law of the United States.

B. The only state law upon the subject is an act passed by the legislature; see laws of 1865, page 667, act 315. This law is as follows:

"(No. 315.)

An act to declare certain abstracts of the records of the County of Kent public records.

Whereas, a large portion of the records of the County of Kent were destroyed by fire in the year eighteen hundred and sixty;

And whereas, an abstract of said records had previously been made, under the direction of Leonidas Scranton, formerly register of deeds of said county;

And whereas, the said abstract has been purchased by the board of supervisors of the aforesaid county, and is now deposited in the office of the register of deeds of said county, as the property thereof;

Section 1. The people of the State of Michigan enact, that the said abstract be and the same hereby is declared to be and established as a public record, and in all the courts

in this state, and in all suits and proceedings therein, and before all officers of this state, having jurisdiction in such suits and proceedings, and shall be *prima facie* evidence of the matters therein stated, and shall have the same virtue and effect as by present provisions of law, the records of the office of register of deeds do possess.

Approved March 21, 1865."

It is said that that law gave the entries on the Scranton abstracts such force as evidence that they will prevail against a patent issued by the United States and be sufficient *prima facie* to overthrow such a patent.

No such force could be given by the state legislature to any local record.

No presumption or inference can rest on this entry to overcome the force of the patent upon which defendants' title rests. At the utmost the statute made the entry evidence of the fact that the parcel of land described as the north fraction of the southeast quarter of section 25, was conveyed by the United States to Lyon and Hastings by patent dated November 5th, 1833, and nothing more.

The decision of the state court that the statute gives the abstract entry the force of evidence of the contents of the patent, is not such a construction of a state statute as is binding upon this court. The state courts cannot, by the construction of state statutes or otherwise establish rules of evidence which will destroy or overcome the force and validity which patents issued by the United States possess under the laws of the United States.

III.

THE COURT ERRED IN HOLDING UPON THIS RECORD THAT ISLAND 5 PASSED TO LYON AND HASTINGS UNDER THE PATENT TO THEM IN 1833 OF THE NORTH FRACTION OF THE SOUTHEAST QUARTER OF SECTION 25, TOWNSHIP 7-12.

1. The claim of plaintiff is that the island 5, or the site of it, passed to Lyon and Hastings his grantors under the patent to them in 1833 of the north fraction of the southeast quarter of section 25. If it did not plaintiff has no title.

2. The burden is on the plaintiff who assails the patent

to the railroad company to show that the island in question did pass to Lyon and Hastings under their patent in 1833.

3. I must, in view of the decision of the State Court, discuss this question upon the proposition that there was an island on the site in question in 1833, which was in later years surveyed and designated as number 5, by the officers of the United States.

4. I contend that that island did not pass to Lyon and Hastings under any view possible upon this record.

5. The material facts upon which the question is to be determined may be briefly re-stated here. They are already fully stated on the preceding pages 14-31 in this brief.

(*a*) In 1805 the title to the lands and river was in the Indians (ante. page 14).

(*b*) In 1831 the United States had acquired only the lands south (east) of the river. The title to the lands north (west) of the river remained in the Indians until 1836 (ante. page 14-15).

(*c*) In April, 1831, Lucius Lyon, Deputy Surevyor, under instructions from the Surveyor General of the United States, "laid out and sub-divided the fraction of town 7-12 *south and east* of the Grand River." All the lines of this survey were east of the river. No survey of the river or lands west of the east bank was made until 1837 (ante. page 17-19).

(*d*) September 19, 1831, the government sold to Louis Campau the east fraction of the northeast quarter of section 25, containing 72 acres. (Islands 1 and 2 lay opposite this tract.)

(*e*) September 25, 1832, the government sold to Lyon and Hastings the north fraction of the southeast quarter of section 25, containing 48 acres. (There lay opposite this tract island 5 and a considerable part of the larger island numbered 3.) Lyon was the same man who surveyed these lands in April, 1831.

(*f*) September 25, 1832, the government sold to Henry L. Ellsworth the south fraction of the southeast quarter of

section 25. (The greater part of island 3 lay opposite this tract.)

(*g*) These three sales took all of the fraction of section 25 east of the river.

(*h*) November 5, 1833, the United States issued to Lyon and Hastings a patent for the north fraction of the southeast quarter of section 25. (The only evidence of this is the entry in the abstract book.)

(*i*) March 28, 1836, the government acquired by treaty with the Indians the land north and west of the river (ante. page 15, 7 U. S. Stat. 491.)

(*j*) In the summer of 1837 the government surveyed everything in this township 7-12 west of the *east* bank of the river.

This survey was made by Whitcomb. He surveyed the section lines of sections 25, 36, etc., across the river from the east bank where Lyon had left them in 1831, and four islands in the river numbers 1, 2 and 3 in section 25, and number 4 in section 36, and the west bank of the river and the township 7-12 west of the river. This survey covered the *entire township west of the east bank of the river* (ante. pages 19-22).

(*k*) August 3, 1839, the government sold island 3 to Richard Godfroy. (This lay opposite the east fraction of the southeast quarter of section 25 previously sold by the government to Lyon and Hastings and to Ellsworth.) August 13, 1839, the government sold island 4 to Aaron B. Russell. Patents for these islands were issued August 10, 1841, to Godfroy for island 3, and August 25, 1841, to Russell for island 4. August 10, 1841, the government sold islands 1 and 2 to Louis Campau. (These lay opposite the east fraction of the northeast quarter of section 25 sold to the same Louis Campau in 1831.)

6. These facts show conclusively that the government, or the officers who were acting for it in the matter of these lands, intended *not* to sell the islands in this river with the land on the east bank, and that they understood that the

islands did not pass to the purchasers of the lands on the east bank in 1831-2.

7. If the government did not acquire these islands until the treaty of 1836, when it acquired the lands west of the river, the islands certainly did not pass under the patent in 1833, and there would be no occasion for any further argument.

8. I shall present the further argument now to be made on the assumption that the government owned the islands and the river in 1831. I concede, for the purpose of this argument, that the river and the islands therein and the lands south (east) of the river had been acquired by the government under treaty with the Indians prior to 1831.

9. The indisputable facts are, that the instructions of the Surveyor General in 1831 were, that only the lands east of the river should then be surveyed and that Mr. Lyon in 1831 surveyed only the east bank of the river and lands east of the river; that in 1831-2 the government sold the fractions of section 25 east of the river according to the survey in 1831. That no survey of the river (except the meander line of the east bank) or of the lands west of the river, or of any islands in the river was made until 1837. That in 1837 all west of the *east* bank was surveyed. That in 1839 the government sold island 3 to a party other than the purchasers of the land on the bank opposite which it lay and in 1841 it sold islands 1 and 2 to Campau, who had already purchased in 1832 the east fraction of the northeast quarter of section 25 opposite which these islands lay.

It must be held on these facts that the government, or its officers, intended not to sell the islands in the river with the lands on the east bank.

10. It appears just as conclusively that the purchasers of the lands in section 25 on the east bank of the river, one mile in extent north and south along the river bank, did not understand that the islands passed to them under their purchases in 1831-2. These purchasers were Ellsworth, Lyon and Hastings (complainant's grantors) and Campau.

Ellsworth bought the south fraction of the souhteast quar-

ter of section 25 in September, 1832. The island numbered 3 lay along this tract and extended further north.

Lyon and Hastings on the same day bought the north fraction of the southeast quarter of section 25. Island 3 lay to a considerable extent and island 5 almost wholly, opposite this. Campau bought the east fraction of the northeast quarter of section 25 in September, 1831. Islands 1 and 2 lay opposite this tract.

In 1837 these islands 1, 2 and 3 and number 4 further down were surveyed. In August 1839 the government sold island 3 to Godfroy, island 4 to Russell and in 1841 islands 1 and 2 to Campau.

There is no distinction between islands 1, 2 and 3 and number 5. These islands formed a continuous line or chain in the river, extending nearly a mile and almost co-terminus north and south with the east fraction of section 25 on the east bank of the river. If island 5 would pass with the land on the east bank, so would islands numbers 1, 2 and 3.

11. There can be no doubt that Lyon and Hastings understood that their patent gave them *no title* to the islands (5 and part of 3) which lay opposite the land bought by them on the east bank.

It is certain that at the time of their purchase, the upper part of island 3 lay to a considerable extent opposite their land; but so far as appears they made no question when island 3 was surveyed in 1837 and sold to Godfroy in 1839.

The position and acts of Mr. Lyon in this connection are significant. He made the survey in 1831 of the lands east of the river and became a purchaser with Hastings of one tract in 1832. He lived in Grand Rapids many years after his purchase. He was the delegate in congress from the territory of Michigan in 1834-35, one of the first senators from Michigan in the senate of the United States in 1836-40, and a member of congress from Michigan 1843-45. He, better than any other man living, knew the situation of the lands on and in the river at this point and the dealings of the government respecting the surveys and sales of this territory, on both sides of the river and the islands in the river.

It does not appear that he ever made any claim to the islands 5 and 3 lying opposite the tract which he surveyed and afterwards became the purchaser of, and the conveyances made by him show very clearly that he did not regard himself as having any title to these islands.

I have set forth in the preceding pages of this brief, 24-29, the conveyances in the chain of title from Lyon and Hastings to the complainant, of the north fraction of the southeast quarter of section 25. There were several conveyances from Mr. Lyon in the years 1834, 1835 and 1836, (pages 24 and 25). In the deed dated May 26, 1834, from Lyon to Bronson of an undivided interest in the land, it was described as follows: "the equal undivided 1-6 part of the north half of the southeast fraction of section number 25, the whole of said north half containing 48 acres be the same more or less according to the published surveys of the lands of the United States, being in town 7 north, range 12 west." In all the deeds from Lyon the description is of the same subdivision of the section 25, containing 48 acres.

12. It does not appear that any claim to the islands 3 or 5 was made by Lyon and Hastings, or by any grantee in the chain of title proceeding from them, until Butler began this suit in 1887. On the contrary, I submit that the deeds in the chain of title show that no such claim was entertained by Lyon and Hastings or by any of their successors in the title before Butler, unless it can be said that such claim was made or intended to be made in October, 1869, by Bryan and Ball in their plat (ante. pages 28 and 29). It is doubtful for the reasons stated (pages 27 and 28) that the plat in 1869 shows any such claim. Certainly no such claim was made before that platting in October, 1869.

I refer again to the deeds in the chain of title (ante. pages 24-29). I call attention to the description in the following deeds, upon which complainant's title immediately rests:

Deed 1848, January 11, Sargent to Nelson of an undivided half of land between Water street and the Grand River.

Deed 1853, November 29, Nelson to Daniel Ball of a

certain interest in the lands lying between Water street and Grand River in the town of Grand Rapids.

Deed 1866, November 8th, Daniel Ball to Byron D. Ball, "that strip of land lying on the east bank of Grand River west of Water street, bounded on the south by the Ellsworth Plat and on the north by the north line of Fulton street, were the same drawn westerly to the river." (This is the land platted by Bryan and Ball.)

Deed 1869, March 11, Byron D. Ball to Dennis W. Bryan "all that strip of land lying on the east bank of Grand River and west of Water street, bounded on the north by the center of Fulton street, were the same continued westwardly to Grand River and on the south by a line parallel with said north line, and 500 feet northerly from the north line of Cherry street, all on and according to the Kent Plat of said city. Intending hereby to convey all of that strip of land between Water street and Grand River, except 500 feet off from the south end thereof." (The lots owned by the complainant are in this description and his title rests on this deed.)

In October following this deed Bryan and Ball joined in the plat of the land south of Fulton street produced and west of Water street. Therefore the very last deed in the chain of title, before the deed to complainant, described the land as the strip between Water street and Grand River.

These descriptions preclude all idea that the owners of this land from Lyon and Hastings down to 1869 made or entertained any claim to these islands.

In 1870-1871 and 1873 Bryan deeded certain of the lots in this plat to Butler.

In 1870 Butler moved on to one of the lots and made it his home there until his death August 12, 1891.

Island 5 was a distinct feature in the river certainly as early as 1855. In that year Thomas Whelpley, under instructions from the Surveyor General of the United States, surveyed islands in certain lakes and in the Grand River in the Lower Peninsula of Michigan (ante, page 22). He surveyed this island 5 with others and found here a well defined

island, which he surveyed and designated as number 5. In his field notes (ante. page 22) he describes it as "containing 2.56 acres; soil sandy, aluvian. Timber gone, except a few trees of maple, elm, etc., valuable for lying in the City of Grand Rapids."

The island 5 was recognized as a distinct tract and treated by the public officers as the propetry of the railroad company in 1873 and the following years. In each of these years the railroad company was assessed part of the general taxes of the city as owner of this island and paid them. See statement on pages 29 and 30.

In 1883 5 the railroad company was assessed to pay the expenses of a local improvement, as the owner of island 5.

The improvment was the opening of Fulton street and the company was assessed $850 of the sum necessary to pay for lands condemned for the street. It was further assessed $53.34, the cost of a sidewalk on Fulton street in front of island 5, and in 1886 a further tax of $55, as the owner of island 5, toward the expense of grading Waterloo street in front of Butler's property and other lots on that line.

13. Upon the facts which I have now stated, with some repetition perhaps, but in such form as to present clearly those which I regard as the material ones, I submit the propositions:

(*a*) That the government did not include the islands in this river in the survey of 1831, nor in the sales of land made on that survey, that it plainly appears that the government intended *not* to include these islands in the survey of 1831 and sales of land then surveyed.

(*b*) The purchasers of the tract from the government in 1831 (Lyon and Hastings) understood that they thereby acquired no title to the islands.

(*c*) The parties to the patent understood that it passed no title to the islands.

(*d*) The owners of the tract for nearly forty years at least, and it might be said for nearly sixty years, acquiesced in that view.

(*e*) It was error to hold that the island 5 passed to Lyon

and Hastings if not expressly reserved in their patent. That decision makes the case turn upon the terms of the Lyon and Hastings patent, whereas they are really immaterial.

The action of the government and its officers show conclusively that they did not intend to include these islands in the survey in 1831, nor in the sales of lands under that survey; or to state it in another form, the government intended to reserve these islands from such survey and sale, and the purchasers accepted and acted upon this view of their purchase.

That intention and reservation on the part of the government appears too distinctly upon this record to admit of any question. Therefore the form and terms of the Lyon and Hastings patent are immaterial. The reservation is so fully established that the insertion of it in or the omission of it from the patent, would make no difference one way or the other. It would be an altogether too narrow view of the case which would make the title, in view of all the facts which appear on this record, depend upon the terms of the patent to Lyon and Hastings.

14. There remains to be considered only the question whether or not there is any rule of law upon which this complainant, in a suit begun more than fifty years after the sale and patent to Lyon and Hastings, can predicate a claim that this island passed to them under that patent, notwithstanding the facts which appear upon this record.

15. In determining that question, two further facts should be considered: (*a*) That the Grand River was and is a navigable river. (*b*) That the land on the east bank of the river, a tract of which was sold to Lyon and Hastings, was surveyed and sold by the government of the United States while Michigan was still a territory. (It was admitted as a state of the Union in 1836-7.)

16. In the case of "The Daniel Ball" decided in 1870, 10 Wallace, 557; this court held "that the Grand River in Michigan is a navigable water of the United States as far as Grand Rapids, a distance of forty miles from its mouth in Lake Michigan, and by its conjunction with the lake it forms a continued highway for commerce, both with other states and with foreign countries."

17. The navigable part of the river in the City of Grand Rapids was in the channel *east* of the islands in question. The steamers ran to docks which were north of Fulton street, which is on the east and west quarter line of section 25. The docks therefore were north of the island in question. The channel of the river west of the islands, while broader than that east of them, was more shallow and was not navigable ordinarily.

(See testimony of Thomas Robbins, who has lived in Grand Rapids since 1835, and commenced running on the steamers when they were put on the river (about 1836), and ran on them for twenty-five years. (Pr. tr., pages 271-273.)

Testimony of Hanchett, pages 238-239. The steamers sometimes fastened a line to the trees on the north end of island 5. (Robbins, page 273-274.)

18. This court in *Shively vs, Bowlby*, 152 U. S., 1, decided March 5, 1894, held "that grants by congress of portions of public lands within a territory to settlers thereon, though bordering on or bounded by navigable waters, convey of their own force no title or right below high-water mark." "Congress has the power to make grants of lands below the high-water mark of navigable waters in any territory of the United States * * * but congress has never undertaken by general laws to dispose of such lands." (Page 48.) "The congress of the United States in disposing of the public lands has constantly acted upon the theory that these lands whether in the interior, or on the coast above high-water mark, may be taken up by actual occupants * * * but that the navigable waters and the soils under them, whether within or above the ebb and flow of the tide, shall be and remain public highways and * * * shall not be

granted away during the period of territorial government." (Pages 49-50.)

The case of *Packer v. Bird*, decided in 1891, 137 U. S., 661-673, was an action for the possession of an island in the River Sacramento, navigable from its mouth to a point above the premises in controversy, (page 662.) The plaintiff claimed title to the island by virtue of his ownership of a tract of land on the west bank of the river under a patent of the United States, described on page 663. There were two channels in the river, one on each side of the island, both plain and well-defined, and the waters of the river flowed through both at all seasons, (page 663.) The channel west of the island was navigable during the greater portion of each year, but the usual and most direct route for steamers was along the channel east of the island, (page 663.) The contention of the plaintiff was that the land patented to him, being bounded on the river, extended to the middle of the stream and included the island, (page 666.) The substance of the decision that: "The courts of the United States will construe the grants of the general government, without reference to the rules of construction adopted by the states for their grants," (page 669.)

"It is therefore important to ascertain and determine what view will be taken by the courts of the United States in the construction of grants of the general government in conferring ownership, when they embrace lands bordering on navigable rivers above the influence of the tide. How far will such grants be deemed to extend into the water, if at all? From the conflicting decisions of the State Courts cited it is evident that there is no such general law on the subject as will be deemed to control their constructions." (page 670.)

After reviewing the cases of *The Genessee Chief* and some others, and some provisions of the acts of congress, (pages 670-672,) and quoting from the opinion in The Railroad Co. vs. Schermeir, 7 Wall., 272, the statement that congress in making a distinction between streams navigable and those not navigable intended to provide that the common law rules of riparian ownership should apply to lands bordering on the

latter, but that the title to lands bordering on navigable streams should stop at the stream, the opinion proceeds, "the same rule applies when the survey is made and the patent is issued upon confirmation of a previously existing right or equity of the patentee to the lands which in the absence of such right or equity would belong absolutely to the United States, unless the claim confirmed, in terms, embraces the land under the waters of the stream. The language of the decree of confirmation describing the tract confirmed and the language of the survey incorporated in the patent (of the plaintiff), both clearly indicate that the margin of the river was intended as the eastern boundary of the tract confirmed, *and we find nothing either in any Act of Congress or in any decision of the Federal Courts, which would enlarge the effect of the grant. The title of one claiming under the patent does not, therefore, extend beyond the edge of the stream.*" (Pages 672-673.) The judgment against the plaintiff was affirmed.

19. Therefore, if the question is to be settled by the laws of the United States, it will be held that the patent to Lyon and Hastings gave them no title to this island.

20. It is claimed, however, that, by the local law, that is, by the law of the State of Michigan on the subject of the rights of riparian owners, it must be held that Lyon and Hastings, by their patent in 1833, acquired this island.

The strongest statement that can be made of such rule is found in the oipinion of this court in the case just referred to (152 U. S.) in the following language:

"The later judgments of this court clearly establish that the title and rights of riparian or littoral proprietors in the soil below highwater mark of navigable waters, are governed by the local laws of the several states, subject, of course, to the rights granted to the United States by the constitution." (page 40.)

Following the above statement a number of former decisions of this court are discussed on pages 40 to 47.

The law of the State of Michigan on this subject is found

in several decisions of the Supreme Court of that state, to which I shall now refer.

The first reported decision was made in 1843, by Judge Manning, Chancellor of the State, in the case of the *La Plaisance, etc., Co., vs. the City of Monroe.* This case presented the question of the rights in the River Raisin. (See Walker's Chancery Reports, page 155.) In the decision it is said, "all navigable rivers by the common law, which law was guaranteed to the citizens of the territory by the ordinance (of 1787) are public highways." (page 165.) "The bed of the stream is public property and belongs to the state. This is the case with all meandered streams, no part of them being included in the original survey, and the common law doctrine of *usque ad filum aquae*, is not applicable to them. The public owns the bed of this class of rivers and is not limited in its right to an easement or right of way only." (page 168.)

The next decision on the subject was made in 1860 in the case of *Lorman vs. Benson* 8 Mich., 18. This case presented the question of the rights of riparian owners on the Detroit River. (Meantime changes had been made in the orgnaization of the judiciary of the state and a Supreme Court organized in 1858. The decision now referred to was made by the latter court.)

Judge Campbell, delivering the opinion of the court after discussing the common law, said: "In applying the principles of the common law to the tideless stream in question, we do not percieve what public interest would be served by placing it on the footing of tide waters when the rules applying to public fresh water streams provide amply for every common easement. * * * We think that in this respect the common law is already adapted to our circumstances. It is urged that this ruling will interfere with the improvement of rivers and disturb the title of islands; but these objections are not well taken. * * * If the government sees fit * * * to regard each island as a separate property, this infringes no common law rule. Islands have always been susceptible of separate ownership and

when so separated the *filum aquae* is to be drawn between them and main land." (page 32.)

In 1862 in the case of *Rice vs. Ruddiman*, 10 Mich., 125, the question of riparian rights in the inland lakes was presented and it was decided that "the principles of riparian ownership in respect to the lakes are recognized substantially to the same extent as applied to rivers." (page 143.) Opinion by Christiancy, J. On page 139 is found the following: "The real question is, whether the ownership of section 18 bordering upon the lake carries with it the ownership of the *locus in quo*, (a mill erected by Ruddiman on lands covered by the shallow water) not whether it extends beyond, or whether its outward limits in the lake can be defined with precise accuracy; but if the water continues so shallow as to render the lands under it susceptible of beneficial private use to the center line of this narrow lake, then I have no hesitation in saying I think the riparian ownership extends to such center line; unless indeed, there may be intervening islands which the government has shown an intention to reserve from the grant of the main land, by surveying them as separate tracts, in which case the riparian ownership would extend only to the center line between the island and the main land."

In 1873, in the case of the *Bay City Gas Company vs. The Industrial Works*, 28 Mich., 182, it is decided that "it is the settled law of this state that any use of lands under rivers which is compatible with the full enjoyment of the public easement belongs with the upland to which it was originally appurtenant, unless sold or granted separately so as to sever it." (page 183.)

In 1882, in the case of *Backus against the City of Detroit*, 49 Mich., 110, the question of riparian rights in the Detroit River was considered. In the opinion (by Judge Cooley) the general question of riparian rights in different waters is discussed. (pages 112-114.) On page 114 is found the following statement: "Other courts have not considered that the greater size of the American rivers was a circumstance that should vary the rule of private ownership on navigable

fresh water streams, and they have held to and applied the common law doctrine that the line of private ownership is the middle of the stream." This is followed by the citation of a large number of cases, to which is added, "These cases, so far as they declare the principle mentioned, have had the approval of this court." To this is added the citation of the cases to which I have above referred to, 8 Mich., 18, 18 Mich., 196, 28 Mich., 182.

THE LAW OF MICHIGAN DECLARED AND SETTLED BY THE DECISIONS OF THE SUPREME COURT OF THE STATE IN THE CASES ABOVE REFERRED TO AND CONFIRMED IN OTHER AND LATER ONES, STATED IN THE STRONGEST TERMS IS THAT "THE TITLE OF RIPARIAN OWNERS EXTENDS TO THE MIDDLE LINE OF THE LAKE OR STREAM OF INLAND WATERS." (62 Mich., on page 636.)

THAT RULE NEVERTHELESS DOES NOT DETERMINE THE TITLE TO THE ISLAND IN QUESTION.

WHILE IT IS TRUE THAT THE OWNER OF LAND ON THE BANK OF THE RIVER WOULD OWN THE BED OF THE RIVER TO THE CENTRE LINE OF THE RIVER WITHIN THE LINES OF HIS LAND LATERAL TO THE RIVER, IT DOES NOT NECESSARILY AND ABSOLUTELY FOLLOW THAT HE WOULD OWN AN ISLAND WITHIN THESE LINES.

IT IS EQUALLY TRUE THAT THE GOVERNMENT MIGHT RESERVE THE ISLAND OR WITHHOLD IT FROM THE SALE OF THE LAND ON THE BANK.

IT APPEARS CONCLUSIVELY ON THIS RECORD THAT THE GOVERNMENT BY ITS ACTION IN THE SURVEYS AND SALES OF THE LANDS ON THIS RIVER AND THE ISLANDS IN THE RIVER, DID RESERVE THE ISLANDS FROM

THE SURVEYS AND SALES OF THE LANDS ON THE EAST BANK OF THE RIVER.

The question must be considered and determined in view of the very material fact that complainant's case is an attack upon the validity of a patent of the United States, which gives to the defendant the island in question, and of the rule of law which attaches to that patent every presumption necessary to sustain its validity, among them the presumption that the island was reserved from the earlier sale. The question of reservation is for this court to decide upon the record, and the decision of the state court is not of binding force. (20 How. 561, 562.) In a case presenting merely the question of the riparian rights of an owner of lands on a river, not opposed to a patent issued by the government or assailing its validity, the state rules of property might be conclusive. This case, however, presents very different questions. The fact which distinguishes it from the others is that herein a riparian right is set up to defeat a patent by the United States, which conveyed the island in question to the defendants. This cannot be done until the presumptions and evidence of facts upon which the patent rests shall be overcome.

There can be no question that islands are not necessarily included in riparian ownership and that the government could reserve or withhold them from sales of lands on the bank.

In the case upon which the Michigan rule of riparian rights rests, *Lorman vs. Benson*, 8 Mich., 18, Judge Campbell distinctly recognizes this in the language (page 32): "If the government sees fit to regard each island as separate property it infringes no common law rule," and in the next case, *Rice vs. Ruddiman*, 10 Mich., 125, Judge Christiancy limited the rule by a qualification which has never been questioned in any decision by that court. He said (page 139): "The riparian ownership extends to the center line (of the water) unless there may be intervening islands which the government has shown an intention to reserve."

The question therefore is whether or not this island was reserved.

The presumption in favor of our patent is that it was.

The course of the government and its officers dealing with these lands, in the surveys and sales show conclusively that it was the intention to reserve or withhold these islands from the sales of land on the east bank.

Assuming that the state court correctly held, that the island passed with the land sold to Lyon and Hastings, unless reserved, that court erred in holding, first, that the question depended on the terms of the patent to Lyon and Hastings, that is, that it was not reserved at all, unless expressly reserved in the patent to Lyon and Hastings from the grant thereby made, and, second, that the entry on the Scranton Abstract was competent evidence of the contents of the Lyon and Hastings patent sufficient to overcome the patent which conveyed the island to the defendant.

The question is to be determined by this court upon the whole record, (upon the presumptions attaching to our patent and the facts which appear as to the course of the government and its officers in dealing with these lands, and of the recognition by Lyon and Hastings of the intention to reserve the islands.)

I ask the court to hold that this record shows that it was the intention of the government to reserve or to withhold or not to sell (whichever may be the proper term) these islands when it surveyed and sold the lands on the east banks of the Grand River, and that they were reserved from such sale and did not pass thereby, or at least that the presumptions which attach to our patent of facts essential to its validity have not been overcome, and to hold that patent to be valid as a conveyance to the defendant of island 5.

21. The view of the case which I submit for the consideration of the court is in harmony with the decisions of this court and of the Supreme Court of Michigan. There is no occasion to consider the decisions of the courts of other states.

This case is distinguished in its material features from the cases relied upon to sustain the complainant's claim.

In proceeding to discuss them I re-state my position.

It is, that the Grand River was and is a navigable river; that under the laws and decisions of the United States the patent of land on the bank would carry only to the shore of the river; that while the law of Michigan under its decisions is that the title of riparian owners extends to the middle of the lake or stream of inland waters, it does not necessarily follow that that title includes islands; that the government could reserve islands from sales of lands on the bank of a river, and that this record shows that the government did reserve the islands in the Grand River, including the islands in question, from the surveys and sales of land on the east bank.

Cases cited in favor of complainant's claim are:

7 Wallace 272, Railroad Co. vs. Schurmeir. In that case the facts appear to have been that the premises claimed by the railroad company were situated upon a fractional section surveyed by the government surveyor in 1847, designated as lot 1 in section 5, and was represented as bounded on the north and west by the section lines and on the only other side by the Mississippi River, which interposed and made section 5 a fractional one, (pages 274-275.) that "at the time of the survey there was a parcel of land lying along the shore of the river about four feet lower than the main land of the fraction, with a channel or slough between it and the main land and about 28 feet wide; the bar or island in its widest part was 90 feet, and in length 160 feet," and "in high water this parcel of land outside was completely under water, in medium water it was exposed to view and the water flowed through the depression, but at very low water there was no flow of water through the depression. Very low water mark was thus the exterior part of the bar or island and the landing place for boats on the Mississippi had always been the south or river side of the island." (pages 275-276.) In the government survey no mention of this bar or island was made. The surveyor, however, in meandering the course of the river along the fraction ran the meander lines along the main land of the shore and not along the southerly line of this bar or island. (pages 275, 276.) In

March, 1849,, the United States sold and conveyed the land to one Roberts, the patent describing the lot 1 as containing so many acres, according to the official plat of the survey; a plat which did not present the bar or island in any way, nor the channel or slough between, but presented the river as the boundary. (page 277.) In the same spring Roberts platted the whole parcel, including the bar or island and intervening depression into blocks, lots and streets as part of the town of St. Paul, and subsequently deeded to Schumreir two lots in what had been the slough or channel. (page 277.) In 1856 after this depression had been filled and the whole space between the lots and the river, including the depression and the bar or island had been graded by the city and traces of both had been effaced, the space originally occupied by this bar or island was surveyed by a government surveyor and platted as island number 11 in section 5. (pages 277-8.) The railroad company claimed title under a congressional land grant. No patent of the lands to the railroad company was issued. "Prior to that survey (of 1856), however, the city had filled the channel and reclaimed the land at the west end of the same and extended the grade of the street and levee entirely across the island to the main channel of the river. Besides, the uncontradicted fact is that the landing for boats and vessels touching at that port was always on the river side of the island." (Opinion, page 285.) The contention of the parties was, by the railroad company that the boundary of the land patented to Roberts was the meander line run by the surveyor, and by the other party that it was the *medium filum* of the Mississippi River. (See page 278.)

The distinction between that case and our case in the facts and in the questions decided is plain.

In the Grand River the deep and navigable channel of the river ran east of the islands and separated the islands from the east bank. There was no possession of the island in question and no claim of title by Lyon and Hastings, or any one holding under them, until long after the survey of island 5 in 1855. Island 5 was not a mere sandbar ordinarily covered

by water and only exposed to view in times of very low water. It was a well defined and timbered island. The surveyor in 1855 found that the timber had been removed, except "some trees of maple, elm, etc."

I contend that these islands in the Grand River were withheld from the surveys and sales of land on the east bank. This Schurmeir case does not touch that question at all. In the opinion in the Schurmeir case reference is made to the acts of congress of May 20, 1785, May 18, 1796, and February 11, 1805. It is said in the opinion, "Proprietors bordering on streams not navigable, unless restricted by the terms of their grant, hold to the centre of the stream. But the better opinion is that proprietors of lands bordering on navigable rivers under titles derived from the United States hold only to the stream; as the express provision is that all such rivers shall be deemed to be and remain public highways." (page 287.)

With reference to the rules of the common law it is said, "Extended discussion of that topic, however, is unnecessary, as the court decides to place the decision in this case upon the several acts of congress making provision for the survey and sale of the public lands bordering on public navigable rivers, and the legal construction of the patents issued under such official surveys. Such a reservation in the acts of congress providing for the survey and sale of such lands must have the same effect as it would be entitled to receive if it were incorporated into the patent." (page 288.) "Rivers were not regarded as navigable in the common law sense, unless the waters were affected by the ebb and flow of the tide; but it is quite clear that congress did not employ the words navigable and not navigable in that sense. On the contrary it is obvious that the words were employed without respect to the ebb and flow of the tide, as they were applied to territory situated far above tide-waters." (page 288.) "Viewed in the light of these considerations, the court does not hestitate to decide that congress in making a distinction between streams navigable and those not navigable intended to provide that the common law rules of riparian

ownership should apply to lands bordering on the latter, but that the title to lands bordering on navigable streams should stop at the stream." (pages 288-289.) Following the above statement the decision is stated in the paragraph on page 289. "Argument is scarcely necessary to show, in view of the definite regulations of congress upon the subject of the survey and sale of the public lands, that the second survey cannot affect the title of the complainant as acquired from the United States under the antecedent official survey and sale." Reading this statement in connection with what precedes it (which I have quoted above), the interpretation of the decision is that the court found that the shore of the Mississippi River, at the point in question, was the river side of the sandbar or island in question. It is distinctly said that the decision of the court is placed upon the several acts of congress and that under these acts, the title of riparian owners stops at the shore of the stream. (pages 288-289.)

The case in the Grand River was very different. There were timbered islands in that river. The navigable channel of the river was east of them and between them and the land on the east bank sold to Lyon and Hastings and others.

My contention that those islands were not included in the survey and sales of land on the east bank is not at all in conflict with the decision on the Schurmeir case.

24 Howard, 41, Jones vs. Soulard. Ejectment by Soulard against Jones for a parcel of land in the City of St. Louis, Mo.

June 13, 1812, there was "a naked sandbar in the Mississippi River covered by ordinary high water, when the river was within its banks." (page 42.) An island was formed from this bar in years later than 1821 and called Duncan's Island. (page 42.) There was only one survey of the territory, which was made at some time earlier than 1812. June 13, 1812. congress passed an act relating to these lands whereby it confirmed the titles of individuals to lots held by them, and reserved all the lots not owned by individuals for the support of schools. Soulard held title under the school grant. In 1851 the legislature of Missouri

transferred the title of the state in Duncan's Island and another island to the City of St. Louis. Jones held title under the city. The question was whether the eastern boundary of the City of St. Louis was the middle of the main channel of the Mississippi River. (page 42.) This court decided (page 65), "that the city charter of St. Louis extended to the eastern boundary of the State of Missouri in the middle of the Mississippi River, and that therefore the school grant, under which Soulard claimed, included the premises in dispute." (page 65.)

51 Mich., 277, Fletcher vs. The Thunder Bay Boom Company. This was ejectment to recover a parcel of land in Thunder Bay River in the City of Alpena, "covered by the waters of said river." The parties to the suit were owners of lands on opposite sides of the river. Both parties claimed under a common grantor, who originally acquired from the government the lands on both sides of the river. (page 279.)

The parcel in dispute "is nearly or quite under water all the time from two to five feet deep." (page 279.) The case presents simply questions of the contsruction of private grants and involves no question in regard to surveys or sales of land by the government.

62 Mich., 626, Webber vs. The Pere Marquette Boom Company. Ejectment. The land in cotroversy is described as follows: "That portion in controversy in this suit is not navigable for vessels, and, except in well defined channels, vegetation, consisting of wild rice, wild grass, and rushes, in the summer season, grows up through the water. The whole tract is, however, covered with water in all seasons at all times from several inches to several feet in depth, and underneath this water is a deposit of mud. No land has ever been seen above the water within the territory described in the plaintiff's declaration in this case. It is not susceptible of being drained or reclaimed, except by diking around the territory so as to exclude the waters of the lake, and pumping out the water and mud. This has been the character and condition of the premises in dispute from 1838

to the present time." (See opinion, pages 631, 632.) The land is in what would be section 26, township 18-18, but for the river. The defendant was in possession under patents isused by the government in 1850 of lots 1, 2, 3 and 4 in section 26, surveyed by the United States in 1838. (pages 632 and 633.) The plaintiff claimed under a patent issued in 1884 upon a location of the so-called "Valentine Scrip," and upon a survey made in August, 1883, the only evidence of which was a diagram designated as a "Plat of an Island in Section 26." (page 635.)

The statement on page 635 shows that the survey of 1883 was attempted by the Commissioner of the General Land Office, under an act passed May 30, 1862; that it was the practice of the commissioner, on application and deposit of moneys to pay the expenses, to order a survey of such islands as were omitted when the surveys were extended over the adjacent lands, and it was held that to give the commissioner jurisdiction to act, two facts must exist: first, there must have been an island which was omitted from the original surveys, and, second, the land must not have been previously conveyed by the United States; and, it was held that the record in that case showed conclusively and without contradiction "that no island upon section 26 was omitted from the survey made by the United States in 1838, and that no island existed or now exists where the plat offered in evidence by the plaintiff represents that there is an island."

This decision is not only not opposed to my position, but on the contrary it supports it in the recognition that it is competent for the government, at any time, to survey an island not previously surveyed, and which has not been sold by the United States.

26 Mich., 508, Watson vs. Peters. Ejectment for a parcel of land in the Saginaw River. This case involved only the construction of private grants. It was contended that the deeds in question conveyed no title to lands beyond the water line. In the opinion by Judge Cooley (page 517), it is said that the owner of city lots may limit his conveyance thereof, but when he conveys with the water as a boundary, it will

never be presumed that he reserves to himself proprietary rights in front of the land conveyed. On page 511, "All the land described in the declaration had always been covered by the waters of the river to the depth of from one to three feet, excepting, however, at times when the waters of said river were moved by heavy winds toward the Saginaw Bay." On page 518 is the statement, "Assuming the *locus*, called 'Sand Island,' to be an island in fact, the inference would be natural and forcible that riparian rights were meant to be granted only to the middle of what is spoken of as the bayou. But we express no opinion on such a case, as it does not appear to have been an island, but rather a sand bar, or place of shallow water, exposed only when the wind was favorable or the water low."

IV.

The survey of island 5 after the other islands.

The fact that the other islands were surveyed in 1837 and island 5 not until 1855, would be immaterial. If island 5 did not pass to Lyon and Hastings under their patent in 1833, it made no difference when the government surveyed it. There was no possession of the island and no claim to it by Lyon and Hastings, or any one under them before the survey in 1855, nor for at least twelve years thereafter.

It cannot, however, upon the record be said that this island 5 was not surveyed in 1837. There is very good reason upon the facts which appear upon this record to suppose that in 1837 the surveyor, Whitcomb, made no distinction between island 3 and island 5, but surveyed them together as one island. There is in evidence an early map of the City of Grand Rapids. (See pr. tr., page 286 last par. introduced, page 358 certified and pages 320-321 testimony of Joseph Penny). I shall present this original document to the court on the hearing. It could not be reproduced in the record. (See page 358.) It does not bear any date, but it was certainly made before 1842. It bears an inscription showing that it was presented to Rev. J. Penney Nov. 11, 1842. It shows an island extending clear up to Fulton

street in front of the land afterward platted by Bryan and Ball, part of which is owned by Butler. Fulton street is the quarter line of section 25. The map also shows a channel on the line of Oakes street, dividing the northern part of the island from the remainder of it. This channel acutally marks the south end of the island 5 as surveyed in 1855, and may have grown wider and made No. 5 more disitnctly a separate body in the intervening years. Undoubtedly this map correctly shows the face of things in 1842, and probably in 1837, as there could not have been any material changes between those years. Islands 1 and 2 are shown on the map north of Fulton street. It also seems that Lyon himself, in the survey in 1831, treated these islands as one. In his field notes of the survey of the east bank (pr. tr., page 351) he notes that the fractional corner between sections 25 and 36 on the river bank is opposite the foot of an island. This of course is island 3. Proceeding north up the east bank there is the note with the fourth course, "at 8 chs. opposite head of island," and with the next coures is the note, "at 5 chs. opposite foot of another do." (island). This shows the distance to be 7 chains, and is about the distance from the head of the island at Fulton street to the foot of island 1 above. It is certainly not the distance between the head of island 3 at Oakes street and the foot of the islands (1 and 2) north of Fulton street.

Judge Holmes, who first came to Grand Rapids in 1837, and resided there since 1838 and bought island 3 or an interest in it in 1855, testified that the island "always ran up to Fulton street" ever since he first knew it in 1837. (See pr. tr., page 324.)

Any controversy between the owners of islands 3 and 5 upon the claim that No. 5 was included with No. 3 in the survey in 1837 must be settled between them. What I now say is material in this case only in answer to the claim by complainant that the surveys in 1837 show no such distinct parcel as island 5, and the inference sought to be drawn from that fact that there was no island then in front of the land between Oakes and Fulton streets. Complainant's point in this respect is shown to be without force.

V.

THE QUESTION OF TITLE UPON THE THEORY THAT THERE WAS NO ISLAND IN 1831, 1833, ON THE SITE OF No. 5, AS CLAIMED IN THE BILL.

I have already stated the claim of title as made by the bill.

The state court decided that "it is immaterial to determine what the facts are as to the condition of this land in those early days, for in our judgment it is of no consequence whether it was what might be termed 'an island' or 'a sand-bar.'"

There *is* a natural difference between an island and a sand-bar. An island is a piece of ground distinct from a sand-bar. There is an essential difference between the meaning of the terms. A piece of ground which can be described as an "island" is not a "sand-bar" nor "a piece of low wet ground."

The court erred in saying that the law is the same in either case.

There is a legal difference between an island and a sand-bar in the rules which will be applied in determining the question of title to them on such a record as this.

I have argued that upon this record the complainants claim and the decision of the court below cannot be sustained upon the theory that the land in controversy was an island in 1831, 1833, and that if it was it did not pass to Lyon and Hastings under their patent.

I have assumed that this court will not consider or determine the case on the theory that the place was a mere sand-bar, submerged except in times of low water, because the state court did not decide that question, but expressly passed over and declined to decide the question of fact, and said that "it is immaterial to determine what the facts were as to the condition of this land in those early days."

I shall not, however, leave the argument there, although it seems to me that I might properly and safely do so. I shall submit very briefly in closing this brief my views respecting that point in the case.

The theory and claim of complainant, and his only claim and theory in the bill is, that the land in question was a sand-bar. (See bill, pr. tr. pages 2 and 3.) The allegations are that "at the time the patent was issued therefor (to Lyon and Hastings) there lay opposite a portion of said lands a low sand-bar or piece of ground which constituted a portion of the bed of said stream; which sand-bar or piece of ground at that time was covered with water, even at low water and was never uncovered, unless perhaps at a very low stage of the waters of said stream," and "that said piece of ground continued for many years and long after the meandering thereof hereinafter mentioned (by Whelpley in 1855) to be covered by water and submerged during the greater part of the year.

The proofs introduced by complainant were intended to support this claim.

The claim involved, *first*, the question of fact, whether the site was a sand-bar or an island in 1831, 1833; *second*, of law, whether or not, if it was a sand-bar as stated, it passed to Lyon and Hastings by riparian right under their ownership of the north fraction of southeast quarter of section 25. It would be essential to the determination of the case in favor of complainant that the court should first find as a matter of fact that the land was a mere sand-bar and not an island in 1833. (There cannot be any play on words. The terms "island" and "sand-bar" have different and distinct meanings and I so use them.) And, second, determine the rule of law to be that the sand-bar passed to Lyon and Hastings under their patent in 1833. As the court below expressly declined to find the fact that the place was then a mere sand-bar, I have not discussed the question.

I now say that it would not be found on this record as a fact that the place was then only a sand-bar.

The case on this point is as follows:

1. The complainant attacks a patent of the United States whereby it conveyed to the defendant the land in dispute and to succeed must have that patent declared void.

2. The burden is on complainant.

3. He must overcome the patent and the presumptions that attach to it and the facts and evidence in support of it.

4. In preceding pages of this brief I have cited cases and quoted from them the rules established by this court on the subject of the presumptions attaching to patents and the allegations and proofs necessary to overcome them when assailed. I refer to that part of the argument without repeating it. It is said that "efforts to annul them (patents of lands) should only be successful when the allegations on which this is attempted are clearly stated and fully sustained by proofs." (121 U. S. 381.)

5. In support of the fact that this was an island in 1833 we have,

A. The patent conveying the island and the presumption of the existence of all facts necessary to its validity.

B. The official survey of the island No. 5 by Whelpley in 1855, who then found a timbered island containing 2.56 acres with "timber gone, except a few trees of maple, elm, etc.." (pr. tr. 338).

C. Such timber as maple and elm does not grow on sand-bars and is of slow growth. Its presence indicates that the island had existed many years.

D. Lyon's field notes of his survey in 1831 indicate an island extending as far north as the quarter line of section 25 and lying in front of the tract afterwards patented to Lyon and Hastings (page 351).

E. There is no question about the general situation in 1833. There was a chain of islands in the river nearly the entire length of section 25 from north to south, certainly two north of the quarter line (Nos. 1 and 2), and one south of the quarter line, which undoubtedly came as far north as Oakes street and probably as far north as the quarter line, now Fulton street, divided by a channel north of Oakes street, with the deepest and navigable channel of the river east of them. In 1837 Whitcomb found the island south of the quarter line "partly under cultivation." (page 354.)

F. The face of the territory remained in its natural con-

dition until 1870, after which time the channel east of islands 1 and 2 was filled.

G. The first plat made from the government surveys is dated July 7, 1831, and was made on Lyons' survey in April, 1831, and so states on its face. It is in the printed record the fifth map in order following page 418. It is of the east bank of the river and the lands east of the river and shows the easterly line of an island in section 25 extending from the south line of the section north to the quarter line and a little north of that line (now Fulton srteet). Lyons' field notes show that the south line of section 25, where it strikes the east bank of the river, viz., the "fractional corner between sections 35 and 36," is "opposite the foot of an island" (p. 351).

H. The second map of the surveys is dated February 2nd, 1832. It is the fourth in order following page 418 and shows the outlines of the island extending from the south line of section 25 north to the quarter line. This was made on Lyon's survey in 1831. The channel separating the north part afterwards called island 5 from the south part afterwards called island 3 is not indicated on this map.

I. The Hollister map, Almy's map of the City of Grand Rapids referred to above and made in 1842 or earlier, shows the island extending from the quarter line of section 25 to the south line of the section divided by a channel north of the eighth line. The original of this is submitted to the court. It was duly introduced. (P. R., page 286.)

J. The defendants called as witnesses men who knew the premises during the years in question, who testified that there was an island then. *Zenas G. Winsor* came to Grand Rapids in 1833; there was then an island there running up to Fulton street; the head of Island 3 is just where it is now (Oakes street); north of that and separated from it by a narrow channel was another island which ran up to Fulton street and some north of it; went over this island first in 1833; the Indians used to camp there (pages 171, 175).

Selden E. Turner came to Grand Rapids in 1832, was on the island a thousand times in 1832, 1833 (pages 215); the

Holmes island (No. 3) was the largest and highest of the islands (pages 215, 216); the present line of Oakes street marks the head of island 3 (page 216); there was an island just north of the Holmes island which I called No. 2, it ran north to Fulton street and a little beyond (page 217); there were trees on it in 1832; there were three large trees which can be seen there now (page 21).

Bilius Stocking came to Grand Rapids in 1834 and came here to live in 1836; knew the Holmes Island in 1836; when I first went down there there was another island there which has always remained there (page 197); it ran up north almost as far as Fulton street (pages 197, 198); I ran the ferry across the river until the bridge was built (page 199); ran it every day and crossed the river just north of the head of that island (page 201); remember three large trees which grew on the island in 1837 (page 203); as to this island, I know more about it than I do about the others, for there my daily work was for two years; I had to run by it all the time; when I came in the dark that island was my guide to start from the other landing (on the west side of the river) to the head of that island (page 206).

Thomas Robbins: Have resided in Grand Rapids since 1835; ran on the steamers on the Grand River for twenty-five years (page 271); there was an island extending from Fulton street down to island No. 3, or the Holmes Island (page 272); there was a channel north of the Holmes Island and the island which I call No. 2 ran from that channel up to Fulton street and something north of it (page 273); I first went down to the island early in the forties; we used to fasten a line from our boat to trees on the island; it was a steamboat (pages 273-274).

Benjamin S. Hanchett: Came to Grand Rapids in 1845; ran on the boats in 1865 and afterwards; the boats then ran up the river to Foster's store, north of Fulton street (page 238); I first visited the locality in 1845; there were then three islands, the Holmes Island, No. 3, a little island north of it which I call No. 2, and another one up where the jail is; there was a channel at the north end of island 3 or the

Holmes Island and north of that channel was an island running up north as far as Fulton street and a little beyond (page 239); I first went down to that island in 1845; there were trees and turf and willows: the timber was on the east side of the island (page 240).

Robert M. Barr: Came to Grand Rapids in 1834 and was here then three years; then lived on a farm five or six years, then came back to the city; first visited the locality on the east bank of the river between Fulton and Oakes streets in 1834 (pages 252-253); there was an island north of the Holmes Island, separated from it by a channel, which in high water was perhaps twenty feet wide (page 253); the island ran from that channel up to about where the ferry came across (page 253); the ferry came across to where the Barnard House now is on the north line of Fulton street; in 1834 there were trees, elms and maple, growing on that island, and it seems to me there was a buttonwood tree there when I came; I first went down to that island in April, 1834, and went over the bigger part of it (page 254).

Abram W. Pike: Came to Grand Rapids in August, 1838; there were islands in the river in 1838; the one that we called the big island, which I have heard now described as No. 3 or the Holmes Island (page 261); the north end of that island came up as far as Fulton street and a little further north; I remember the ferry and crossed upon it often; it left the east bank of the river about at the Barnard House: in crossing on the ferry we passed the head of that island (pages 261-262); that island ran from its north point south about half a mile: there was a small channel running through the island, a narrow channel about a rod wide (page 262): the steamboat channel was east of the island: I often went up and down that channel in early years. In 1838-1839 I was on this island every few weeks (page 262).

Ransom C. Luce: Came to Grand Rapids in 1842; remember the islands in the river: the north end of island No. 3 or the Holmes Island, the large island, was about at the north side of Oakes street (pages 149-150): and between the north end of that island and the present line of Fulton

street there was an island in the river and we used to call it No. 2; it ran up as far north as Fulton street (pages 150-151); there was a stream of water between the two islands. (page 151.)

David Laraway: First came into Kent County in 1833, winter of 1833-34; there was an island north of the Holmes island; I often went on to it in the early days; it ran up to about Fulton street; we used to run the ferry there; starting from what was known as the Old Red Store House, we would swing to pretty near the head of that island when we got out that far in the river. (page 280.)

John Mc Connell: Came to Grand Rapids in 1847; the lower island we called Godfroy's island and immediately north of it, in 1847, there was another island, which we called No. 2 (page 284); there was a channel between that and the big island, I should judge twenty paces wide; that island came from that channel up to the quarter section line, which is the present line of Fulton street. (page 285.)

6. The complainant offered the following testimony to show that the premises were merely a sand bar and not an island:

John Butler, the complainant, testified that he purchased lot 5 in 1870 and moved on to it the same year and has lived there ever since (page 118); when he first went there there was land west of Waterloo street, extending west as far as a line running north and south and about one hundred feet west of Waterloo street, and from that line there was nothing but water clear across the river; the same year or the next year, he was not sure, there appeared a little spot of sand and sawdust (page 119); and from that year that little sand bar increased quite rapidly. (page 120.) (This testimony is incredible. The assertion that this island 5 first appeared as a small point of sand in 1870 and was formed by accretions in later years is so flatly contradictory of all other established facts in the case as not to be worthy of consideration.)

Thomas W. Greenley came to Grand Rapids in 1845; worked on the steamboat: ran up to Foster's store near

Pearl street (page 38-39); there were no islands between the head of island No. 3 and Fulton street in 1845, and none in 1854; the island between Fulton and Oakes streets has been formed since 1850, or, say, sooner than that. (page 41.)

Maxim Ringuett: Have lived in Grand Rapids since 1836; first worked four or five days on island 3 planting corn and then worked on a pole boat on the river; the north end of island 3 is shown by a tree or two trees that now stand there; between that street and where Fulton street now is there was what I called a sand bar; there was a creek between that sand bar and island 3, (page 52); the ferry was where Fulton street now is. (page 53.)

Thomas Berry came to Grand Rapids in 1845. (page 73.) Island 3 extended from Oakes street south, came up north to between Oakes and Island streets (pages 74-75); between the head of island 3 and the ferry-crossing there was a sand bar and some willows growing on it; it would not show any out of water in ordinary time; there was no island between island No. 3 and the ferry. (page 72.)

James A. Rumsey came to Grand Rapids in 1837. There were trees growing on the island just a little north of what is now Oakes street, north of island 3 and between that and Fulton street there was a long strip of willow bushes running up to about fifteen rods south of Fulton street. (page 78.)

Thomas W. Porter: Came to Grand Rapids in 1850 and has lived here since 1853; my work was steamboat painting; was in the habit of going up and down the river and on all the islands and bars,; there were four islands in the river when I came here. The old ferry crossed the river about where Fulton street is now (page 90); I remember the large trees at the head of island 3, I can fix the head of island 3 by the large tree, it strikes present lines at Oakes street (page 91); there was a small patch of very low ground covered with bushes and rushes right at the head of island No. 3 (page 91); there was not over half an acre and so wet you couldn't walk on it; it extended north toward Fulton street I should think probably three or four rods; it was probably

300 feet from the head of those bushes to where Fulton street is now (pages 91-92); there was no island between No. 3 and the ferry. (page 92.)

Ebenezer W. Barnes: Came to Grand Rapids in 1836; was employed the next spring in a store down on the river bank; was there two or three years and then went to Grand Haven; remember the ferry which crossed the river (pages 327-328); the terminus of the ferry on the east bank was at Fulton street; I have a faint recollection of island No. 3; I don't remember of any island or any land appearing in the river between the ferry and island No. 3; in the river between the ferry and island 3 I noticed a good deal of sand; in crossing the ferry boat used occasionally to get on to the sand, but not to hinder it in particular; I should think it was all sand below that. (page 328.)

John Dorris: Moved on to the premises on Waterloo street in 1846; crossed the river a great many times on the ferry and didn't discover anything only high water between islands 2 and 3; neither tree, bush nor anything of the kind. (pages 292-293.)

James D. Lyon: Have resided in Grand Rapids since 1841. Remember the ferry; it ran from a point about where Fulton street strikes the river now; crossed the ferry a great many times; in crossing on the ferry it was I should judge 15 or 20 rods on the left side to the head of any island; the upper part of the island you saw then was low covered with willows and bushes; a sand bar on the upper end. (page295.)

I have now referred to the testimony of all witnesses called by the complainant on this subject and have extracted from their testimony the very strongest statement it will bear as to the condition of the premises between Fulton and Oakes streets, without sifting the testimony and calling attention to some material qualifications in it appearing in the cross-examinations of some of the witnesss.

I submit that if the matter were before this court it would decide upon this record, first: that there was an island on the site of island 5 in the early years, 1831-1833, or second:

that the complainant has failed to produce testimony of sufficient weight and preponderance to overcome the presumptions and evidence that there was an island on that site in those years.

VI.

I submit for the consideration of the court, if it shall become pertinent, the point that the riparian rights of the owners of land on the east bank extended, even under the Michigan rule, only to the center of the *east* channel of the river. Such a rule is suggested by Judge Cooley in the opinion written by him deciding the case of *Watson vs. Peters* cited *ante* pages 62, 63. (See 26 Mich., 518, top of page.)

Leaving island 5 out of the question there were islands in the river comprising substantial tracts of land and forming a chain extending north and south through this section 25 and dividing the river into two channels, the navigable one being east of the islands. These islands (1, 2, and 3) the government unquestionably treated as parcels distinct from the land on the east bank and surveyed and sold them as such.

It seems that the rule suggested by Judge Cooley would be applied upon these facts, and that it would be held that riparian rights arising upon ownership of lands on the east bank extends only to the middle of the east or navigable channel.

VII.

I respectfully submit that the decree of the State Court should be reversed and the bill dismissed with costs.

December, 1894.

T. J. O'BRIEN,
Counsel for Plaintiff in Error.

FILED.
JAN 25 1895
JAMES H. McKENNEY,
CLERK.

BRIEF FOR DEFENDANT IN ERROR.

SUPREME COURT OF THE UNITED STATES.

October Term, 1894. No. 198.

Error to the Supreme Court of the State of Michigan.

14693.

THE GRAND RAPIDS AND INDIANA RAILROAD COMPANY, THE CONTINENTAL IMPROVEMENT COMPANY, WILLIAM H. BARNES, AND THE PHILADELPHIA TRUST, SAFE DEPOSIT AND INSURANCE COMPANY,
Plaintiffs in Error,

vs.

JOHN BUTLER.

ROGER W. BUTTERFIELD,
WILLARD F. KEENEY,
Counsel for Defendant in Error.

GRAND RAPIDS, MICH.:
DEAN PRINTING AND PUBLISHING COMPANY,
—1895—

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Brief for Defendant in Error.

STATEMENT OF FACTS.

We have up to the present time received no copy of the brief of plaintiffs in error. We are advised that it was printed some time since, but, for some reason unknown to us, plaintiffs in error declined, upon our application, to furnish us with a copy of it. Inasmuch as we are denied the privilege of examining the statement of the case prepared by opposing counsel, it is necessary for us to enter upon a somewhat more extended discussion of the facts than we might otherwise feel called upon to do. We, therefore, preface our argument by a

statement of the essential facts by which the case is controlled. This is the more necessary, perhaps, because when briefs were filed in the State Court, we found ourselves unable to coincide with the views of counsel for plaintiffs in error respecting some of the salient facts appearing in the record.

This cause was decided in Mr. Butler's favor by both the *nisi prius* court and the Supreme Court of Michigan, and it was believed by each of those tribunals that such decision was in harmony with the rules of law as theretofore laid down by this court. We expect to demonstrate that the facts in the case at bar do bring it within the purview of those rules.

I.

The bill was filed by complainant below, defendant in error in this court, for the purpose of quieting title to certain lands in the city of Grand Rapids. It was filed Sept. 9, 1887. The statute of Michigan applicable to the case is the following: "Any person having the actual possession and legal or equit-"able title to lands, may institute a suit in chancery against "any other person setting up a claim thereto in opposition to "the title claimed by the complainant, and if the complainant "shall establish his title to such lands, the defendant shall be "decreed to release to the complainant all claim thereto, and "pay costs, unless the defendant shall, by his answer, disclaim "all title to such lands, and give a release to the complainant, in "which case costs shall be awarded as the court may deem "just."

Howell's Statutes, vol. 2, § 6626.

This statute was amended by the legislature in 1887, by act passed June 27th, and now reads as follows: "Any person

"claiming the legal or equitable title to lands, whether in pos-"session or not, may institute a suit in chancery against any "other person not in possession, setting up a claim thereto in "opposition to the title claimed by the complainant, and if the "complainant shall establish his title to such lands, the defend-"ant shall be decreed to release to the complainant all claims "thereto, and pay costs, unless the defendant shall, by his "answer, disclaim all title to such lands and give a release to "the complainant, in which case costs shall be awarded as the "court may deem just."

Howell's Statutes, vol. 3, § 6626.

So far as concerns this action, there is no material difference between the original and the amended statute. The State Court found that complainant had possession of the property in dispute (Opinion, Record, p. 390), and he is, therefore, fully authorized to maintain the action under either of the sections above quoted.

II.

The lands in controversy lie on the easterly bank of Grand River, as it now runs, immediately south of Fulton street, in the City of Grand Rapids. They are within a short distance of the heart of the city. Defendant in error claims the lands under the riparian title. Plaintiffs in error claim under a later and antagonistic grant. Both parties claim under grant from the United States. Defendant in error asserts that the premises are part of the north fractional half of the southeast quarter of section 25, township 7 north, range 12 west. Plaintiffs in error assert that they are part of Island No. 5 (so called) in Grand River.

We are, therefore, to consider the dates of the respective grants and of the surveys under which they were made. The essential facts in this regard appear in the bill (pp. 1-10.)

The north fractional half of the southeast quarter of section 25 lies upon the east bank of Grand River. In February and April, 1831, that part of the town lying east of the river was surveyed and subdivided, and the east bank of the river was meandered and surveyed (pp. 350-351, 332-334). This work was done by L. Lyon, then deputy surveyor, and in this year both banks of the river were mapped and platted. (See map annexed to record, marked 619.)

In 1837 the west bank of the river was meandered and surveyed, and the four islands in the river in this township were also meandered and surveyed in the same year (pp. 352-355.) These islands were designated as Islands Nos. 1, 2, 3 and 4, respectively.

It is beyond dispute that no island was meandered or surveyed on the site of the so-called Island No. 5 in 1831, when the east bank of Grand River was meandered and surveyed, and the fraction of the town lying east of the river was surveyed and subdivided (pp. 332-334, 336, 350-351.)

In 1837 the survey of the river was made complete by the survey of the west bank and the four islands in the stream, and that part of the town lying west of the river was surveyed and subdivided (pp. 352-355.) At this time no island was meandered or surveyed on the site of the so-called Island No. 5. This is a conceded fact. The proofs show it, and the answer admits it (Answer, pp. 14-15, paragraph sixth.)

The north fractional half of the southeast quarter of section 25 was entered from the government by Lucius Lyon and Erotus P. Hastings on September 25th, 1832 (p. 320, q. 32, 36, Tract-Book, record, p. 338). Patent therefor was issued by the United States to Lyon & Hastings on November 5th, 1833 (pp. 109, 339). Our claim, as set forth in the bill and urged in the State courts, is that Mr. Butler and his predecessors in title acquired by the grants to them the usual rights of riparian proprietors under the laws of Michigan, and took the

title to the bed of the stream to the center or thread thereof. This includes the lands now in dispute (p. 4). The spot in question lay much nearer to the east bank than the west. The east channel of the river was a narrow one. The west or main channel was much wider, and is stated by the various witnesses to have been three, four, five or six times as wide as the east channel (Rumsey, p. 78, q. 40; Porter, pp. 92-3, q. 58-61; Butler, p. 131, q. 174, p. 134, q. 222; Luce, p. 170, q. 158, p. 171, q. 169, 170; Stocking, p. 207, q. 160.) The principal trade of the city was on the east side, but the boats also ran up the main or west channel, and there was a steamboat warehouse on that side of the river (Rumsey, p. 86, q. 186-191; Porter, pp. 92-93, q. 62-63). The main or west channel in the center was just about as deep as the east channel (p. 112, q. 157.)

The defense is that in 1855 there was surveyed a piece of land in Grand River lying opposite the premises of which Mr. Butler's lands are a part, which piece then surveyed was marked by Mr. Whelpley, the deputy surveyor, as Island No. 5 in Grand River. This survey purports to be made pursuant to instructions given May 24, 1854, to the deputy surveyor by Leander Chapman, the surveyor-general for Ohio, Indiana and Michigan, whereby the deputy was authorized to survey certain islands in Pleasant Lake and Skift's Lake, and in Grand River, Michigan (Certificate, p. 356). The survey was made in the third quarter of 1855 (See map annexed to record, marked 621). The verification by the deputy was in February, 1856 (p. 356), and by the chainmen November 22, 1856 (p. 357). The survey was, therefore, made nearly a quarter of a century after the rights of Mr. Butler's grantors became vested. It was made after the little Indian village, where the face of no white man save an occasional fur-trader was often seen, had grown into an incorporated city. It was sought for the first time to survey this spot and to claim it as an island more than twenty-four years after the survey of the east bank, twenty-three years after the sale to Lyon & Hastings of the lands lying on that bank, more than eighteen years after the

survey of the lands on the west bank and all the islands on the stream.

As late as 1871 the Grand Rapids and Indiana Railroad Co. procured from the General Land Office a patent, which, with many thousands of acres of lands, none of them in this vicinity, purported to cover Island No. 5, in Grand River, containing 2 56.100 acres (pp. 348-349). This patent was for a portion of the land-grant to the railroad company. The patent was kept from record; it was not recorded until August 9th, 1887 (p. 349). On September 9th, of the same year, the bill in this cause was filed (p. 11).

The foregoing facts are not the subject of dispute. They are matters of record evidence. They were set up by us in our bill (pp. 1-11), and for the most part are admitted by the answer (pp. 12-17). We, therefore, contended in both State courts, and we also contend at the bar of this court, that, as matter of law, complainant is entitled to a decree upon the pleadings themselves, supplemented by but little proof, and that of a formal nature.

III.

But while the rules of law seemed to us to be perfectly clear, we required plaintiffs in error to meet an additional issue. We raised by our bill a question of fact. We insisted in the bill that in 1831, when the east bank was surveyed, in 1832, when the lands on such bank were sold to Lyon and Hastings, and even down to a much later date, the premises in question were not, properly speaking, an island in fact. We alleged that they were more properly "a low sand-bar or piece of

ground which constituted a portion of the bed of said stream," (p. 2), a "piece of ground" (p. 3), or a "piece of middle ground" (p. 4), than an island in fact. Our case, as made by the bill, and as argued in the *nisi prius* and appellate courts of the state, was, therefore, planted broadly upon two propositions, one of the fact, the other of law.

First. At the time of the survey and sale of the lands on the bank the spot in question was not an island in fact, and was not treated by the authorities as such.

Second. Whatever its character, inasmuch as it was not meandered or set apart as an island, it passed to the riparian proprietor as appurtenant to the grant of the lands on the bank.

We have never deemed it essential to the maintenance of our case, that the first proposition be found to be supported by the proofs, and the cause was submitted in both the state courts upon that theory. If there was an island in fact, and it was left unsurveyed, when the banks of the river and the other islands were surveyed, our client is not to be deprived of the rights which vested in and are derived from his predecessors in title under the original grant. But we do attach importance to the showing made by the proofs upon this question of fact. We believe that these proofs fully establish our proposition. We believe that these proofs give added strength to the claim which we make in point of law, and that, appealing as we do to a court of conscience, we have shown beyond a peradventure that the equities of the cause are with the defendant in error.

Let us not be misunderstood. It is not our claim, and never has been, that there was not a formation in the river, changing more or less with the seasons and operated upon by the current; but it is our claim that, at the early day in question, this formation was not considered or treated by the surveyors and officials of the United States as an island; that their action in this regard was proper because it was not at that time an island in fact; and that in any event the determination of the then representatives of the Federal Government has been acted upon, rights have been acquired under it, and such determination is now conclusive

Our position in this regard we believe to be sustained by the record. As one familiar with the administration of justice in *nisi prius* courts would expect, there is, after the lapse of sixty years, a variance in the recollection of witnesses. The oral testimony is best understood when read in connection with the documentary proofs. As bearing upon this proposition we ask attention to the following matters.

a. The first survey was made in 1831. No such island as No. 5 appears thereon. We have already adverted to the fact, that when the easterly bank was meandered and surveyed, the islands in the river were not meandered or surveyed, but the plat made by the deputy surveyor in 1831 shows a line nearly parallel with the easterly bank in the place where Island No. 3 was afterwards located. It does not show a representation, sketch or outline of Island No. 5. (See map annexed to record, marked 620, made by Lucius Lyon, D. S.; certified by the surveyor-general July 7th, 1831). There is in the record another map of the southeast fraction of this township, certified by the surveyor-general Feby. 2nd, 1832. This sketches both banks of the river. It shows the outlines of the spot where Island No. 3 was afterwards located; but this island was not then meandered or surveyed. It does not show a representation, sketch or outline of Island No. 5. (See map annexed to record, marked 619).

b. The survey of the river was completed in 1837. That it was not intended to locate or reserve an island where No. 5 is now claimed to be, is conclusively shown by the survey of the river when completed in 1837. We call attention to the plat of the survey of that year as it appears in the office of the surveyor-general. (See map, defendant's Exhibit B, marked 618, and annexed to record.) This plat shows the survey of the west bank of the river, of all the lands in town 7–12 lying on the west side of the stream, and of all the islands lying in Grand River. Islands Nos. 1, 2, 3 and 4 are traced on the map and distinctly named, and the acreage of each is given. Island No. 5 does not appear on this plat or map. Certain lines are traced upon the map between the ferry and Island No.

3, and near the place where the premises in question lie. This place, however, is not marked or designated as an island. It is not named as such. It is not meandered or surveyed. No acreage is given. It does not appear in the field-notes of the surveyor. *That it was not intended to set apart or designate this spot as an island is proved with all the certainty of mathematical demonstration* by this circumstance: The acreage of the lands in the town on the mainland and in the islands is given as follows:

Islands - - - - -	14.60 acres
Mainland - - - -	20,763.89 "
Total - - - - -	20,778.49 acres

The acreage of the islands in the town, as shown by the plat, is made up in this way:

Island No. 1 contained - - -	1.50 acres
" " 2 " - - - -	1.99 "
" " 3 " - - - -	9.01 "
" " 4 " - - - -	2.10 "
Total acreage of islands in the town	14.60 acres

We have proved our point with more than a moral certainty. Not only do we find here no mention of Island No. 5, but we find the most indisputable evidence by documentary proof and by mathematical calculation that no such island was deemed in fact to exist, or was intended to be set apart or reserved to the United States.

c. Island No. 3, as we have noted, was meandered and surveyed in 1837. We ask an inspection of the field-notes of the survey of this island, (pp. 354-355.) These notes give the meanders of the island, beginning at a post on the lower or southerly end of the island. The survey then leads up the stream on the west bank of the island, until the eleventh course takes us "*to maple on head of island.*" This is the maple afterwards cut down by John Doris (Butler, p. 133, q. 200, name by mistake printed Baars; Doris, p. 293, q. 21.) The next course takes us S., 24½ degrees, E., 1.27 chains, and the surveyor makes this comment: "Channel between this and

"low willow isle 75 links wide, and 3 feet deep, opposite ft. of "willow isle on left, 250 of low wet ground on left to channel." This reference to the spot in question shows that up the stream, north of Island No. 3, there were at this time some willows growing. That there were at times willows which sprouted and grew at this place we never have disputed. The memorandum also shows that the spot in question is referred to or designated as 250 links of low wet ground lying on the left as the surveyor turned his course on reaching the head of Island No. 3. It further conclusively shows that the attention of the surveyor was particularly directed to this spot, and that, though designating it as a low willow isle or as 250 links of low wet ground, *he did not deem it to be worth claiming or reserving to the government as an island in fact, and that it was purposely passed by and excluded from the survey for that reason.*

We know of no doctrine which permits the court, more than sixty years after the fact, to review the action of a governmental officer within the strict limits of his official duties.

d. Such references as that mentioned in the preceding subdivision are by no means uncommon, in the field-notes of surveyors, although there is not the slightest intention of excepting or reserving as an island the spot to which reference is made. An examination of the field-notes of Island No. 1, (p. 354) shows this reference: "Crs. to head of low willow "island N. 10, W. 3 chs." This indicates that north, 10 degrees west from the sycamore at the head of Island No. 1, was a spot which was referred to by the surveyor as a "low willow "island," undoubtedly a tuft of willows growing in the stream just as at the place in question; and yet this spot was never excepted or reserved as an island. Undoubtedly it was not an island in fact; whether it was washed away by the action of the water or carried off by the action of the ice, is uncertain; but this much is clear, it never has been heard of from that day to this.

e. It was argued in the state court in behalf of plaintiffs in error that reference to the field-notes of the survey of the west

bank of the stream established the existence of an island on the spot in question. We submit that such notes show quite the reverse. The sixth and seventh courses locate a willow at the head of Island No. 3 (p. 335). Mr. Rumsey, the surveyor, testifies that, according to the survey, this bush would be south of Fulton st. about 175 ft. (p. 309, q. 51). The Skeels' tracing, introduced by us on cross-examination, shows that the bush was located by him south of Fulton street. There was also a tracing made under the direction of Mr. Skeels, the surveyor for the plaintiffs in error, which was introduced by them. This did not show the bush marked as the head of Island No. 3. It was not like the original tracing in this particular, for the reason, as the witness very frankly testifies (p. 155, q. 28-32), that *some of these things were omitted by order of defendants' solicitor, who stated what he wanted put on the plat and what he wanted left off.*

We do not wish to be misunderstood. We do not charge that there was any improper motive in omitting from the plat this landmark. Counsel for plaintiffs in error may not have regarded it as having an important bearing on the questions in issue. We, however, would give to it its legitimate weight as bearing upon the correctness of the survey thereafter made of Island No. 5. It is our belief that Island No. 3 terminated, at the north end, at the channel just north of the big trees; and that when, eighteen years later, Mr. Whelpley came to make a survey of the so called Island No. 5, he had to run far enough south to include three of those trees in order to make up the quantity of land included in Island No. 5, and that thereby he encroached upon Island No. 3 as originally surveyed. In this light all monuments which refer to the head of Island No. 3 are important to be considered; and in the same connection it is also important to consider that Mr. Skeels did not try to make a survey of Island No. 3, and that his tracing does not undertake to show the location of Island No. 3 from any survey made by him (p. 156, q. 53-55).

The reference in the field-notes to the willow at the head of Island No. 3, which the surveyor for the railroad company

found so embarrassing, must be taken in connection with the field-notes of the survey of Island No. 3 itself, made, as the notes indicate, on the following day (pp. 335, 352-355). Thus read the facts seem clear. The surveyor, in going down stream on the west bank, saw a bush south of Fulton street which he sighted, and probably then supposed to stand at the head of Island No. 3. When he meandered and surveyed that island on the next day, he found that the island properly went no further north than the maple tree marked as the head thereof (p. 355), and that the bush sighted by him as the head of the island was a willow growing in the stream above island No. 3. These facts are in strict accord with the testimony of the witnesses for defendant in error. The like explanation is doubtless the correct one as regards the references in the meanders of the east bank (p. 351). The islands there referred to are the one after designated Island No. 3 and the upper islands, afterwards called Nos. 1 and 2.

f. It is also to be noted, as bearing upon the question of the existence of this so-called island, that the witnesses in the cause included a large number of old residents; and yet not one of them claims to have heard of Island No. 5 at any time prior to the patent to the railroad company in 1871. Not a single witness claims to have heard that on the site of the premises in question an island had been surveyed at any time, save the zealous witness, Zenas G. Winsor, who came from Chattanooga to testify in behalf of the railroad company. He claims to have heard of the survey at some time (p. 176, q. 79). No other witness pretends even to a hearsay knowledge.

g. There is attached to the record a map marked 616, and which is indorsed: "This map appears on the back of Commis- "sioners' certif. to complt's Ex. A." Complainant's Exhibit A consists of the certified copy of the field notes from the office of the Commissioner of the State Land Office at Lansing (pp. 332-338). This map is not an exhibit in the case, and ought not to have been printed as such. We offered in evidence the field-notes Exhibit A, but we did not offer the map on the back of the certificate (pp. 149, 332). Our reason for not offering

the map was that it was not made at the time of the survey, and, therefore, is not properly to be read therewith.

We should care nothing whatever about this, and should make no mention of it, were it not for the unwarranted statements which have been based upon it. In the Appellate Court the counsel for the railroad company filed a brief in which they stated of this map: "It was made in 1831. It distinctly shows "the Island 5." But it would seem impossible that the person who wrote the brief could have read the record. Nothing is clearer than that the map was not made in 1831. It was made at least a quarter of a century afterwards. It is a map of the river as corrected from time to time according to practice of the General Land Office, and it was certainly corrected after the resurvey of 1855, which endeavored to add Island No. 5 to the list of islands already surveyed.

Plaintiffs in error did not try their cause upon the claim that Island No. 5 was surveyed as early as 1831, nor yet when the other islands were surveyed. On the contrary they expressly admitted in their answer (p. 15) that "*the island in question (No. 5) was not surveyed until 1856, at the time and by the person alleged in the sixth clause of the bill.*" And the proofs show, beyond the possibility of cavil, that no survey of Island No. 5 was made until the third quarter of 1855, and that the survey was not approved until July 24th, 1856 (pp. 338, 356; maps annexed to record, marked 621-622). It will also be noted that the map 616 not only portrays Island No. 5, but that it gives its area, 2.56 acres, which could not possibly be known until the survey of 1855 was completed. The map also shows the surveys of the islands 1, 2, 3 and 4, and the area of each is given. None of these last mentioned surveys was made until 1837 (survey of 1837, Exhibit B, marked also 618; record pp. 354-355). It is, therefore, impossible that the map 616 could have been completed in its present form prior to 1856.

h. If there were in fact an existing island when the lands in this vicinity were thrown upon the market, is it not a peculiar circumstance that no effort was made to procure its survey or to purchase it from the government? It lay near the center of

the town. The value of lands on the site of the present city of Grand Rapids was even then keenly appreciated. As early as the survey of 1837, it is stated by the surveyor that the small islands 1 and 2—containing 1.50 and 1.99 acres respectively—*are then valued at from $2,000 to $3,000* each (p. 354). It does not appear when Islands 1 and 2 were entered, but it was without doubt very soon after the survey of 1837, and they were patented in 1841 (pp. 319, 349). Islands 3 and 4, lying further from the center of the city than the premises in question, were entered in 1839 (pp. 319-349-350). These islands seem to have cost the purchasers from $1.25 to $3.05 per acre (pp. 349-350).

It is matter of history that the Grand River valley was rapidly colonized in and after the year 1836; that among the incoming population were many speculators in land, shrewd, bold, successful, confident in the future of the young settlement, keenly alert to secure every foot of land that promised to increase in value. Yet no attempt is made to procure the survey or purchase of any island at this point where it is now claimed one so plainly existed. The years pass. As late as 1855 a survey is for the first time made—a survey which seems to have been secretly, if not surreptitiously made—and in 1871 the land is endeavored to be patented without money consideration to the railroad company in a grant including no other lands in this vicinity, but thousands of acres elsewhere. The fact that for forty years no attempt was made to purchase this land, lying, as it did, almost in the heart of the city of Grand Rapids, is of itself a conclusive indication that it was not known or believed to be an island, reserved to and owned by the United States; for, if it had been an island in fact owned by the government, it was open to purchase at a merely nominal sum.

It appears from the evidence that there was no selection by the railroad company, nor any attempted reservation from the market for its use of the lands in question until 1869 or 1870; and, if there was an island in fact upon the site in question, it might, therefore, have been purchased at any time prior to that

date. There is no evidence as to when the map of the railroad was filed, or its lands selected, other than as contained in the patent itself. It recites that it was issued under an act of Congress approved June 7, 1864 (p. 348). This act was amendatory of an act of Congress approved June 3, 1856. Neither of these acts provided for the withdrawal of any lands of the United States from the market. U. S. Statutes at Large vol. 11, p. 21; vol. 13, p. 119. But the railroad company was to make its selections from the lands which were left when the time for making selections arrived. The patent recites that the railroad company made its selections at various dates between Sept. 16, 1869, and April 5, 1870, inclusive. It is, therefore, shown that for some thirty-nine years after the survey of the east bank, no one cared to risk a cent in the attempt to get the government title to this alleged island. This is of itself the strongest indication that the premises were not of such character as to give countenance to such an attempt.

i. That even as late as 1855 no such island as is now claimed did in fact exist, is shown by the survey of the premises as they lie at the present time. Some of the witnesses for the railroad company testify, and counsel seem to rely greatly on this, that there has been no material change in this so-called island since the early years in which the Grand River valley was settled. This claim proves too much. It results simply in proving that the recollection of such witnesses is radically at fault. It must be recollected that the witnesses referred to examined the premises just before the trial occurred; that the present condition of the premises was impressed upon their minds; that maps and plats made at a comparatively recent date were laid before them by counsel for the railroad company and by the diligent detective, Mr. Heath, whose name is frequently on the lips of the witnesses for the defense. We are confident that the court, upon perusal of the record, will conclude that many of those witnesses have unwittingly bent their testimony to conform to the now existing state of affairs. An examination of the record as a whole cannot but impress it upon the Court that the physical transformation wrought by time has been little short

of marvellous. To some of these changes we shall call attention later. One circumstance alone would work a great alteration. It is a matter of common knowledge that the river has greatly decreased in volume. There is much less water, not more than half as much, now in the river than there was in earlier years (Greenley, pp. 41-42, q. 46, 47; Ringuette, p. 53, q. 53, 54; Rumsey, p. 79, q. 57).

Yet note the testimony of Skeels, the railroad company's surveyor (pp. 156-157). Upon cross-examination, he says that upon the plat made by him the lines of the west shore were not drawn by the minutes; that the survey as made by him is a survey of Island No. 5 so far as he could go *without running into the river; that it is merely a survey of the south and east sides of the island;* he didn't go on the other side, because the minutes would take him into the river, so far into the water that it would interfere with the working—five, ten or fifteen feet.

When condemnation proceedings were had in 1883 to open Fulton street from Waterloo street to the river, a map was made by Mr. Collar, the city surveyor. A copy of this map is annexed to the record, marked 625. This map also shows that the west line of the island cannot be drawn by the minutes without extending far into the waters of the river as they now run.

If this is the case, now that the waters of the river have so greatly decreased in volume, what must have been the fact in 1831, or even in 1855, when the first survey of this so-called island was made?

j. While there is a conflict in the oral testimony adduced at the trial, we believe that the testimony better comports with our view of the facts. We do not think that the court desires a formal abstract or condensation of the testimony; but we desire, at least, to call attention to some of the salient features of the proofs, and the bearing which they have on the issues involved.

The claims of plaintiffs in error as set forth in the testimony of Turner (p. 214), and some of the other witnesses sworn by them, are that there was from the earliest days an island on the spot in question; that this island was high, and was always out of

water in ordinary stages; that it contained the three large trees which are mentioned in the testimony; that other trees were growing on the island; that a large soft maple stood at the head of the island (p. 233); that Island No. 3 came no further north, or but little further, than the enbankment or roadway leading from Oakes street; and that everything north of that was part of Island No. 5. It is utterly impossible to reconcile this testimony with the condition of things as shown by the field-notes and plats of the government surveyors.

The testimony given by the witnesses for defendant in error, on the contrary, does harmonize with the field-notes and plats. It shows that north of Island No. 3 there existed nothing more than the willows and the low wet ground to which the surveyor, in 1837, made reference in his notes of that island (p. 355). We further proved that the large trees were not on the lands in question at all, but that they marked the head of Island No. 3. If the surveyor, in 1855, in surveying the so-called Island No. 5 included these trees within the limits of such island, it was a gross error on his part. The tree lying farthest north was a maple. The witness John Doris had lived for many years on the south half of lot 13 of Bryan & Ball's subdivision. This is the lot of which defendant in error owns the north half. The witness knew this maple tree, which stood at the head of Island No. 3, and he it was who cut it down for firewood quite a number of years ago (p. 133, q. 200; p. 293, q. 21). This tree, we believe it to be established, was the tree mentioned in the field-notes of Island No. 3 as situate at the head of the island (p. 355).

Indeed, it is incredible that these large trees, which have grown within the life of no man now living, stood on an island north of No. 3 in 1837, and escaped mention when that island was surveyed. It is a well known fact, as Mr. Rumsey, the surveyor, testifies (p. 309, q. 54-55), that surveyors are in the habit of taking trees as monuments when they can get them. That Mr. Whitcomb, who surveyed Island No. 3, was accustomed so to do, his field-notes sufficiently prove (pp. 352-355.) Counsel for plaintiffs in error would, nevertheless, have the

court believe, that, when the survey of 1837 was made, the surveyor turned at the head of Island No. 3, saw on his left but a few feet away, three large trees, constituting the most prominent land-marks in sight, and yet wholly omitted to make mention of those trees, and made note that he saw only a low willow isle and 250 links of low, wet ground (p. 355.) If these large trees did not mark the head of Island No. 3, the surveyor, when he turned on reaching the head of the island, would have seen, not a low willow isle, not 250 links of low, wet ground, but a prominent island 4 or 5 ft. above the waters of the river, with large trees standing upon it. If the claims of plaintiffs in error are correct, then the minutes of Island No. 3 (p. 355) are false and misleading, as though the surveyor had never seen the land therein described. We submit that, in case of conflict, the court will follow that line of testimony which most exactly accords with the contemporaneous official records.

The changes of the last half century have been great. It is now solid land from the steamboat landing to Fulton street. Great fillings, made from both artificial and natural causes, lie where once ran the waters of Grand River. Of the landmarks now existing, and which aid us in arriving at the facts of this case, the most prominent are the trees to which we have referred. Our claim that these trees, as shown by the field-notes, stood at or near the head of Island No. 3, is fortified and established by the testimony of the witnesses for defendant in error. Mr. Greerley, who ran on the steamboats on the river when he came to Grand Rapids, states that these large trees were at or near the head of Island No. 3 (pp. 40-42, q. 33-36, 51-52); that the head of the island was not more than 25 or 30 feet north of one of the trees now standing (p. 47, q. 137-144). And so Mr. Ringuette, an early French settler, who worked on this very Island No. 3 in 1836 (pp. 51-52, q. 22-30). He also worked on a pole-boat on the river (p 51), and hunted pigeons here a great deal (p. 54, q. 64-65). He is able to identify the tree now standing as situate near the head of Island No. 3, because his attention was called to it by a man working with him

in 1836 as a tree different in kind from the other trees on the island (pp. 68-70, q. 292-301, 318-331). Thos. Berry (p. 72, q. 25-26; p. 73, q. 41). Porter (pp. 90-91, q, 30-41). This witness testified that, though the trees now standing are about at the head of Island No. 3 (pp. 104-105, q. 234-254), there was one, he thinks, a little further north (p. 104, q. 246). This, of course, refers to the maple tree which Doris cut down. This witness, Porter, was very familiar with the premises. When he first came to Grand Rapids, he was a steamboat painter, and his occupation called him to this immediate vicinity. He has been very familiar with the river and all its islands, for he has been a collector of specimens, in particular a hunter for shells. John Doris (pp. 291-293) has lived on Waterloo street most of the time since 1845, and for 19 years prior to the trial lived on the south half of lot 13 of the Bryan & Ball subdivision. He swears that the soft maple which he cut down stood at the head of Island No. 3, and that it stood four or five feet south of the south line of his lot (q. 16-22).

k. The plaintiffs in error, in their anxiety to show that, north of Island No. 3 and south of Fulton street, there was a high island with large trees standing thereon, attach great importance to the existence of a so-called inlet. This is a small indentation in the bank of the river. As shown by a map devised by counsel for plaintiffs in error and printed by them with their brief in the appellate State court, it assumes a size and shape which, we respectfully submit, there is no testimony in the record to warrant. (See this map, record, p. 386.) So slight is the indentation or depression, indeed, that on the city map made by so competent a surveyor and engineer as the city surveyor, Mr. Collar, no trace of it appears. (See city map, annexed to record and marked 626). Nor is there any trace of it upon the map prepared by the city surveyor for use in the condemnation proceedings (annexed to record and marked 625); nor upon any other map which was introduced in evidence. In order to display such indentation or depression, it became necessary to devise a map, after the trial of the cause, the legitimacy of which is vouched for by no witness. The de-

pression is not so great but that through the center thereof, and near the line of the river, there runs a roadway which was dry even at the time of the hearing of the cause, though the river was then at an unusually high stage, higher than Winsor, a witness for the railroad company, had seen it at any time (p. 191, q. 312.)

Some of the witnesses for plaintiffs in error were misled by the existence of this indentation at the present time, to state that it marked the head of Island No. 3 as it was originally surveyed; whereas the head of this island was in fact marked by the large trees and by a depression lying just north of them. This depression is the low ground upon which corn has been planted. At a later stage in the cause this error on the part of certain witnesses for the railroad company was made clearly to appear from the testimony of Judge Holmes, who was sworn in rebuttal. He was, at the time of trial, one of the owners of Island No. 3, and had been interested in it since June, 1855 (p. 322, q. 4). From his evidence it is shown that this indentation was made within thirty-five years prior to the trial. He testified that he was familiar with this indentation south of the big trees. The first he ever saw of it was after he became interested in the island. When there was a very high freshet one spring, a large tree was torn down from somewhere up the river and lodged west of the island; it remained there some years. When the water went down that spring, he discovered a little formation, like a little brook, but it disappeared as the water went down. In succeeding years, he testifies, the same thing was repeated, and the indentation through which the water passed was formed in this way (p. 322, 323, q. 11-17). It is true that the witness says that he has claimed that Island No. 3 runs north beyond the big trees, but he also testifies that north of the big trees there was a low place over which the water ran (p. 326, q. 63-64), and he admits that he has heard that the notes of the survey of Island No. 3 show that it will not extend up the river as far as he has claimed (p. 326, q. 65-67).

What we claim from the testimony of Judge Holmes is that, taken in connection with the field-notes and other evidence in the cause, it conclusively shows that the little indentation so conspicuous in the map devised by counsel and so comparatively insignificant out of it, did not mark the head of Island No. 3, but that it is a mere cut-out, made by the action of the water at a much later period. The witness Doris testified that there was a willow or tree standing in this cut-out; that it was not a natural channel; that he had been on there when there was no water (p. 293, q. 23-25.)

l. We ought to touch upon a few other salient points as bearing upon the accuracy of much of the testimony given in the case. Plaintiffs in error find it necessary to contend that the ferry ran from the east bank a short distance above the quarter line; but, if there is one point upon which there is no room for controversy, it is this: that the ferry, in leaving the east bank of the river, started at the quarter line where Fulton Street now is. The survey of 1837 (Defendant's Exhibit B, marked also 618) shows that the ferry started even a little below the quarter line on the east bank, and, in crossing the stream, kept a straight course somewhat down stream, striking the west bank of the river at the foot of a roadway, shown on the plat, leading to the Mission Church. (Stocking, p. 206, q. 150-153.)

The testimony of the witnesses agrees with the plat, rather than with the claims of plaintiffs in error. There were on the east bank of the river, just north of Fulton Street, two storehouses, known as the red warehouse and the white warehouse. It is agreed that the ferry started from a landing below the lower warehouse. Greenley says the ferry started from Fulton Street (p. 40, q. 30-31.) Ringuette says on Fulton Street next to the white store house (p. 63, q. 209-217.) Rumsey says just below the warehouses; he should think about in Fulton Street (p. 77, q. 29-30.) Stocking, a witness for the railroad company, says the ferry was immediately below, probably it was 50 feet below the end of the lower warehouse; the warehouse was pretty near to the upper side

of Fulton Street, the ferry ran a little down. Again he says, it started from, say, 20 feet below the warehouse. The building stood on the north line of Fulton Street, and the ferry started 20 feet below that. There was no landing wharf for the ferry (p. 198, q. 38-45.) Again he puts the ferry landing 30 feet south of the lower warehouse (p. 200, q. 80.) Luce, also a witness for the railroad company, contrary to the other witnesses, puts the ferry landing about 200 feet north of Fulton Street, but he fixed the middle warehouse where the Barnard House barn now is, and says that below this was the lower warehouse (pp. 269-270, q. 189-194.) The Barnard House barn stands just north of Fulton Street, and inasmuch as the lower warehouse was below this, and then came the ferry landing still farther down, that landing could not possibly be 200 feet north of Fulton Street. Doris says that the ferry started right from the end of Fulton Street, where the bridge now is (p. 294, q. 39-40.) And so Lyon (p. 295, q. 3-4). An Capt. Barns says the same (pp. 328, 330), and that in crossing the river the ferry bore a little to the south. Porter speaks of the ferry as a little below where Fulton street now is (p. 90. q. 28-29.)

The facts as claimed by the defendant in error are in all respects consistent with the indisputable fact as to the location of the landing-place of the ferry. Crossing the river upon the ferry, starting from Fulton street or a little below it, and taking a course somewhat down stream (Plat, Defendant's Exhibit B, marked 618, survey of 1837), the witnesses ran into no island high and prominent in the stream. They saw below them merely a sand-bar in the river. Below this were a few willows growing in the stream, which are evidently the same willows referred to in the field-notes: probably 200 or 300 feet below the ferry, Ringuette says (p. 53, q. 52); Berry (p. 72, q. 31); Rumsey (p. 78, q. 43-49). This witness has seen steamers pass over the water between Fulton street and the band of willows (p. 79, q. 60); and so did Porter see the steamers "Michigan" and "Algoma" pass over this place (p. 93, q. 64-66). Butler (p. 122, q. 53, 54). Capt. Barns (p. 328).

This witness recollected the time when the steam-boat "Gov. Mason" ran aground on this very bar 8 or 10 rods below the ferry; and the people on the boat jumped into the water on this bar to shove her off. Greenley (p. 41, q. 36.)

The version given by some of the witnesses for plaintiffs in error is not equally probable; but, on the contrary is in flat contradiction of the contemporaneous documentary proofs. The witness Turner, for example, states not only that there was an island on the spot in question, but that it extended north of Fulton street about 175 feet (p. 217, q. 42); that the upper end of the island was its highest part; it was between four and five feet high (p. 220, q. 57-61). As Fulton street was approached, there was timber growing, several soft maples from eight to twelve inches through (p. 217, q. 44); at the head of the island there had been a big soft maple tree; a dozen trees, soft maple sprouts, all of them from six to ten inches through, sprung up and stood there for years (p. 218, q. 44). In 1832, he says, the island contained four or five acres (pp. 232-233, q. 204).

Had there been any such island as this, it would have been absolutely impossible for the ferry, starting from Fulton street and taking a direction somewhat down stream, to cross the river at all. It would have been necessary to go up stream from the landing in order to cross. Had there been any such timber, is it not a remarkable circumstance that no stump or other trace of its presence can now be seen? The island, he says, contained four or five acres, and yet when the survey of 1855 was made, and the surveyor had taken in the upper portion of Island No. 3, as we confidently assert, upon which the big trees stood, he made only 2.56 acres; and, in order to do this, he ran so far into the water, that even to this day, with the waters greatly decreased in volume, Mr. Skeels, the surveyor for the railroad company, can not run the west line of the island without running a considerable distance into the river. And is it not also a singular circumstance that the surveyor should wholly omit to meander or survey so prominent and valuable an island as such one must have been, while, at

the same time, he so carefully meandered and surveyed Islands 1, 2 and 4, containing 1.50, 1.99 and 2.10 acres respectively?

Equally improbable is the testimony of other of the witnesses for plaintiffs in error in this regard. Winsor testifies that in 1836 there was on the spot in question an island containing five or six acres (p. 187, q. 255). This witness testifies first that the island ran north from Fulton street (p. 174, q. 46); that the ferry crossed about Fulton street (p. 174, q. 49-50.) Then he says that there were a birch and some willows, quite large trees, along up the present line of Fulton street, and for some distance north of it (p. 177, q. 84-85). Then that the island hardly came up to Fulton street (p. 177, q. 90). Then that he thinks the point where the willows were came 50 or 75 feet above Fulton street (p. 177, q. 90-92). Later, he says he thinks the willows extended 75 feet north of Fulton street (p. 178, q. 95). On the same page he says he thinks there was timber up to Fulton street (q. 104); and later he says that, if he testified that the island ran 75 feet north from Fulton street, he is mistaken (p. 185, q. 217). We ask with confidence, what dependence can be placed on testimony so confused, contradictory and uncertain, when it is relied on to dispute the situation shown by the field-notes and plats of the surveyors, and the testimony of witnesses whose recollections tally more closely with the documentary proofs?

m. If the spot in question was an island, it was a nameless one. The designation Island No. 5 was unknown to the witnesses. It was, therefore, found necessary to improvise a designation for it; and Island No. 2 is the term by which a few of the witnesses for the plaintiffs in error refer to the territory in dispute. This notwithstanding the facts that the government survey and field-notes show Island No. 2 to be a well defined, prominent and valuable island farther up the stream (Plat Defendant's Exhibit B, marked 618; record, p. 354); and that the witnesses who seem to be the best informed upon this subject knew the upper islands by their appropriate designations Nos. 1 and 2. (Greenley, p. 40, q. 27–29; Ringuette, p. 59, q.150-151; Butler, p. 131, q. 178; Stocking, p. 198, q.

49). The last named witness was called by plaintiffs in error. He uses in some instances the designation which the agents of the railroad evidently preferred should be employed, but reference to his testimony shows that he knew where No. 2 in reality lay. In speaking of Island No. 3 and this alleged island above it, he says that there was a channel between them; and "we call them one," he says, "because it was together; I guess there was a little water between them; I know there was when the river was up," (p. 197, q. 33). This, if it means anything, means that a portion of this spot which counsel now wish to designate as Island No. 2 was in reality part of No. 3. This is strengthened by the further testimony of this witness that this so-called island ran about 100 feet north of the so-called channel south of the big trees (p. 210, q. 209-210), which would take it not even so far north as the maple tree which the witnesses for defendant in error state stood at the head of Island 3.

Hanchett says that there was an island here which ran 75 or 100 feet north of Fulton street; that the head of the island was above the Barnard House (p. 245, q. 123-126.) But this is evidently incorrect, because the ferry landing, as we have seen, was considerably below the Barnard House (Luce, p. 270, q. 190-194.) The witness Hanchett also states that the so-called island extended about 300 or 400 feet north of the channel which lay south of the big trees, which would take it about to the maple at the head of Island No. 3, as our witnesses placed it (p. 244, q. 112.) So Winsor says it extended about 400 feet north of this channel (p. 193, q. 346.) Jennings says about 300 or 400 feet (p. 250, q. 71.) Barr says it extended 600 or 700 feet north from the head of Holmes Island (p. 260, q. 126-7.) Laraway says it extended 20 or 25 rods north from the channel (p. 282, q. 47.) McConnell says 20 or 30 rods (p. 286, q. 38.) From this testimony introduced by plaintiffs in error themselves, it is entirely clear that there could have been no such island at this place as some of their witnesses said. From the testimony of James L. Rumsey, the surveyor, it appears that in a straight line due north it is 900

feet from this little channel to Fulton street. It is 800 feet due north from the lower end of Island No. 5, as surveyed, to Fulton street, and about 100 feet further south to this small channel (p. 307, q. 30, 32.) This so-called island is not claimed to run due north and south, but in a diagonal direction. From this it is entirely clear that when these witnesses state that it is 300 or 400 feet from the small channel to the head of the island, they have in mind, and they are simply locating, the head, not of a separate island, but of Island 3 itself, and are putting it just where our witnesses put it, at the maple tree, which we believe sufficiently appears to be the very tree which the surveyor located as the head of the island when the survey of 1837 was made.

n. Upon the trial below it seemed to be claimed in behalf of defendants that the running of certain lines as the boundaries of Island 5 in 1855 conclusively established the fact that an island then existed: and it was sought to be drawn as an inference that, if in 1855 an island existed, one must also have existed in 1831 and 1837. We ask attention for a moment to the testimony of the surveyor for the railroad company itself. Mr. Skeels' maps do not show that the survey of Island No. 5, made in 1855, does not encroach on Island No. 3, as surveyed in 1837; for, though he makes Island 3 appear on his map, he frankly testifies that its location is not shown from his survey (p. 156, q. 55). It will be recollected that he omitted from his plat (p. 155, q. 30, 31) the monument referred to in the field-notes as the head of Island 3 (p. 335), and the meanders or boundaries of this island, as given in the original survey thereof, seem to have been quite as embarrassing to him as the monument. The surveyors cannot locate any such island as plaintiffs in error claim existed. Skeels cannot make Island 5 run down as far as the small channel at which counsel claims it terminated. He says that the south side of the island goes 75 or 100 feet north of this channel (p. 158, q. 81). He was tracing up the field-notes, he says; he stopped where they stopped; he found a comparatively level piece of ground, like a field, except where it had been filled in; he measured it

without a single natural boundary to assist him on the east side of what is called Island 5 (p. 158, q. 88-90). The line of Island 5 does not lie next to the old channel, but 50 or 60 feet west of it (p. 159, q. 98-102). It is impossible, in his opinion, to reproduce and find the exact line that was made or traced by the surveyor that surveyed the island first (p. 159, q. 103). A good deal has been formed, by natural causes, since the witness came to Grand Rapids, eighteen years before the trial (p. 159, q. 107-110). Here, then, is a plain confession by the company's own surveyor that he is unable to find the island as it is claimed to have been made by the deputy surveyor in 1855, and that the physical formation indicates, if, indeed, it does not conclusively show, that no island could have existed where this is claimed to lie.

The other surveyor, Mr. Rumsey, testifies that he ran the line of Island No. 5 down to the straight line at the southern end of the island. He says *this is the highest natural point on the whole island* (p. 306, q. 12-13). There is nothing south of it or immediately north that would indicate that an island ever terminated there. At the south end of the island it slopes off and *the island commences at the highest point of the summit.* There is nothing to indicate that any channel ever existed at the south side of the island (p. 306, q. 15-19). The witness found a depression north of the trees, about 66 feet wide, and running in such direction that it might connect with the old channel (p. 307, q. 24-25). This we think without doubt to be the channel mentioned in the field-notes as 75 links wide, which the surveyor found at the head of Island 3, when the survey of 1837 was made (p. 355). This low depression north of the trees looks, he says, as if a channel might have run there; it is where the corn is planted; it runs from east to west, and is considerably lower than the lands adjacent (p. 314, q. 138-139). From the south line of Island No. 5, as surveyed, it is about 100 feet on the south to the little narrow channel marked on the map. This channel is about 20 or 30 feet wide (p. 307, q. 36). This surely is an additional circumstance to show that this cannot be the channel 75 links wide to which the field-notes

refer. Mr. Rumsey further testifies that, in running the lines of the island, he ran north of two of the big trees, and south of the tree that stands furthest north (p. 314, q. 136-137). This also conclusively argues that no such island ever in fact existed as the survey of 1855 shows.

IV.

MR. BUTLER'S POSSESSION AND IMPROVEMENTS.

In the State courts counsel for defendants argued that complainant Butler had had no possession of the premises in controversy, and had made no improvements thereon which could in any way aid his claim of title. It was held by those courts, however, that the possession of complainant was sufficient to enable him to maintain his suit (Record, pp. 390, 374). This conclusion is most amply supported by the evidence, and is not subject to review in this court. We, therefore, should not advert to the question here, were it not that we desire, with as much brevity as possible, to lay before the court the present situation of the premises.

The plat of the Bryan & Ball subdivision was introduced in evidence (p. 114; plat annexed to record, marked 617). This plat shows that the subdivision was platted on September 28th, 1867, nearly four years before the patent to the railroad company was issued. In the dedication of that plat it was expressly stated that "*the easterly and westerly lines of all the lots* " *are made at right angles with the west line of Water street, and* " *extend westerly to the middle of the channel of Grand River,*" except where the angles and length of such lines are otherwise described by figures on the plat (pp. 114, 115).

Mr. Britton, supervisor of the ward in which this land lies, testified to a conversation which took place between Bryan and himself with reference to the lots on this plat in the fall of 1871 (pp. 301-302, q. 14-19). Britton wished to buy one of the new houses that Bryan had built near where Butler had bought, and in speaking of the lot Bryan told him that it extended back to the middle of Grand River, and in response to an inquiry whether such deed would be good, declared that he would make that deed good in spite of the world.

Butler first purchased of Bryan March 25th, 1870, more than a year before the patent to the railroad company was issued (p. 115). Before he bought he obtained abstracts of title, and could find no incumbrance against the property (p. 134, q. 76). When he bought he understood, as he swears, that he was purchasing to the center of Grand River. "All the record I could find," he testifies, "showed it went there, "and that is what I bought. I bought all the right that Mr. "Bryan and his wife had, and I would not have bought unless I "supposed it was so" (p. 124, q. 75, 76). He further testifies upon this point that he first heard of Island No. 5 in Grand River after he bought and began to make improvements; he had quite a large improvement before he heard of any such thing (pp. 126-7, q. 103-104).

The changes in the *locus in quo* have been in part the result of natural and in part the result of artificial causes. Until late in the 60's there lay in the river, between Pearl street bridge and the present location of the Grand Rapids & Indiana Railroad Co.'s bridge, the two small islands, marked in the survey as Islands 1 and 2. (See City Map annexed to record, marked in record 626). At that time the narrow channel east of these two islands was filled up. The islands were thereby added to the main-land, and thereby the flow of the water through the east channel was stopped (p. 135, q. 231). At nearly the same time, in order to make it possible for the small boats navigating the river to ascend the stream on the easterly side, the channel on the east side of Island 3 was dredged, and, in making a basin at the upper end of the dredged channel, a barrier

was thrown across from the east bank of the river to the east bank of Island 3. The water of the river, seeking its old outlet on the east side of Island 3, struck this barrier and running back along the high ground next to Waterloo street, made a whirlpool or eddies running back up the river to Fulton street. This aided much in making a filling back of Mr. Butler's house, (pp. 120-121, q. 28-34). In addition to this, a large sewer, coming out at Fulton street, emptied its contents at the north end of the premises in question. The answer alleges, that, by consent of the defendants, "the sewer was extended southerly "between Island No. 5 and the mainland, so as to complete the "improvement and give value to the Island" (p. 16). This, however, is entirely a mistake. There never was a sewer running between Island 5 and the mainland. Nor is there a word in the record in support of this averment in the answer. Other changes have resulted from improvements made both by the municipality and by individuals. Both Fulton and Waterloo streets have been raised ten or fifteen feet. Not a trace remains of the old warehouses, or any other landmark to which the witnesses refer, excepting the three large trees and a depression north of them about 66 feet wide. The riparian proprietors have, without let or hindrance, filled in and used the premises as their convenience or desires have dictated.

After Butler purchased in March, 1870, he commenced building and improving. This was as early as May or June of that year (p. 118, q. 13). Since that time and down to the trial he steadily resided on the premises described in the bill, and, as he swears, was continually in possession of them (p. 118, q. 14-50). He had four houses on the lots owned by him besides the residence in which he himself dwelt (p. 137, q. 255). He testifies that he has let his tenants use and work upon the premises in controversy; they have plowed it, planted it with corn, potatoes, onions and cucumbers; he has kept on improving the lots ever since he bought, whenever he has had an opportunity (pp. 122-123, q. 55-58). The large filling which he has made back of his house is of solid earth taken from the hill where the Ledyard block now stands and from other

places (p. 123, q. 64). This filling commenced in 1870, and continued up to the time of trial, and probably cost Butler more than $1,000 (p. 123, q. 65–70). Indeed, it must have cost him much more than this, for he says later on that he has used in all about 20,000 yards of earth (p. 142, q. 319.) The high filling that he made laps on to Island No. 5 (p. 124). Later he speaks of a willow that stood near the edge of the sand-bar, and says that this filling extended up to that (p. 142, q. 323). This is 360 or 370 feet from Waterloo street (p. 142, q. 324). At first he inadvertently stated that the filling that he made went about 120 feet west of what was the east shore of the river; but he meant to say 220 instead. He afterwards corrects this and says that this high filling extends an average of 100 feet, perhaps, beyond what he had previously stated (p. 137, q. 256). This brings the high filling about 100 feet from the bank of the river as it now is (p. 137, q. 259). A portion of this improvement would be over the sand-bar (pp. 137-138, q. 260-263). He says he has made a top dressing over the sand-bar and seeded it down (p. 137, q. 258, p. 141, q. 309-310; word "sodded" in record by mistake for seeded). In the courts below defendants claimed that this grass was of natural growth; but not only does Butler himself testify that he has put on a top dressing and seeded it down, but defendant's witness Turner refers to the same thing and says that grass has been sown along by Butler's (p. 227, q. 141-142).

Scarcely can we conceive of stronger assertion of title and possession than is proved in this case. Plaintiffs in error claim to hold not only what they are pleased to call the island itself, but as far east as the center of the so-called easterly channel. Under his claim of title Mr. Butler has filled in all of this channel, as well as part of the so-called island, lying within the limits of his lots, to the depth of several feet. Of the remainder he has had all the possession which the nature of the property will admit. Not only have himself and tenants had pastures and gardens thereon, but he has of late years enclosed it with a fence, thereby the more effectually to keep out all intruders. Butler's tenant, John Grant, occupies this parcel as pasture

lands (pp. 296-297, q. 391-395). This occupancy, the testimony shows, is but one incident of the possession which Mr. Butler maintained, absolute and exclusive, from the time of his purchase in 1870 down to the trial. We are fairly entitled to claim from the evidence that as to the lands appurtenant to the parcel first purchased by him, Mr. Butler has maintained such possession that he is entitled to hold under the statute of limitations. This statute in Michigan prescribes fifteen years as the period which must elapse before title can be acquired by adverse holding.

Nor is Butler the only one who has been in adverse possession of the island which the railroad company claims. There are other fillings besides his on this so-called island. The high filling below his was done at the instance of the riparian owners (p. 297, q. 400-402). William B. Ledyard also made a filling back of the lots owned by him (p. 298, q. 413-414). Below Butler's are some barns and sheds and a little factory, all of which have been placed on the alleged island, and in defiance of the claim of plaintiffs in error thereto (pp. 297, 298, q. 396-398, 418).

In closing our observations with respect to the present situation of the premises, we beg leave to refer again to the map devised by counsel for plaintiffs in error (p. 386). This map, it will be recollected, was not authenticated or used in the *nisi prius* court, but was prepared subsequently. If counsel sees fit to appeal to the court through his artistic talents, he should at least be at some pains to have his representations consistent with the proofs.

The court will observe the inlet as the most prominent feature upon the face of the map. But the testimony does not support the existence of any such channel as is here portrayed. We have seen that it was so small that the city surveyor does not even note its existence upon either of the maps prepared by him. (Maps 626 and 625 annexed to record.) The little channel or indentation found at this place is 20 or 30 feet wide (Rumsey, p. 307, q. 36.) But, as shown upon this unauthenticated map, it is nearly 100 feet wide in the narrowest part

and at the west end much wider. We respectfully submit that no testimony in the record gives countenance to any such enlargement as is here shown. The trees, as given on this map, are not properly located. The tree standing farthest to the north, the maple which Doris cut down (p. 133, q. 200), stood four or five feet south of the lot line of Doris' land, the south half of lot 13 (pp. 292, 293, q. 17, 7.) The map in question locates it much farther north. The high filling toward the rear of Butler's lot extended farther west than this map indicates. It lapped on to the island (p. 124, p. 142, q. 323.) So Turner, the witness for plaintiffs in error, states (p. 227, q. 143.) The little factory, the barns and sheds are omitted from this map; nor does Mr. Ledyard's filling find any place upon it (p 297, q. 396-398.) The above are a few of the essential particulars in which this map is erroneous, and may justly be said to represent the zealous and partial views of counsel, and not the facts as shown by the proofs. We therefore respectfully request that the court be not misled thereby to our prejudice. The proofs in this cause, documentary and oral, are so ample that we fail to see the necessity for manufacturing further evidence after the close of the trial at *nisi prius*.

The Hollister map, so-called, is referred to in the proofs, but is properly omitted from the printed record. This map was not authenticated in any way. It is a paper kept for some time by Jos. Penney as a curiosity, but does not appear to be based upon any survey, and its accuracy is in no way vouched for. It was, therefore, properly objected to when offered (p. 321.)

ARGUMENT.

I.

In Michigan the common law prevails. By an unbroken line of authorities the rights of riparian proprietors have been maintained in Michigan upon the doctrines which are applied by the common law to rivers in which the tide does not ebb and flow. This has been the consistent and deliberate policy of the commonwealth. For a half century it has stood as the unquestioned law of the state that a grant of land, bounded by a stream, whether navigable in fact or not, carries with it the bed of the stream to the center or thread thereof.

Lorman v. Benson, - -	8 Mich. 18
Norris v. Hill, - - - -	1 id. 202
Ryan v. Brown, - - -	18 id. 196
Watson v. Peters, - - -	26 id. 508
Attorney General v. Evart Booming Co.,	34 id. 462
Maxwell v. Bay City Bridge Co., -	41 id. 453
Twogood v. Hoyt, - - -	42 id. 609
Pere Marquette Boom Co. v. Adams -	44 id. 403
Richardson v. Prentiss, - -	48 id. 88
Cole v. Wells, - - -	49 id. 450
Turner v. Holland, - - -	54 id. 300
Clute v. Fisher, - - -	65 id. 48
Turner v. Holland, - - -	65 id. 453
Grand Rapids v. Powers, - -	89 id. 94

In Ryan v. Brown, *supra*, this doctrine was applied in the case of the Sault River. which forms the means of communication between two of the greatest of our inland seas; and in Lorman v. Benson in the case of the Detroit River, which is a still greater highway of commerce.

This principle is so firmly fortified and established in the jurisprudence of the state that it admits of no presumption to the contrary.

In Watson v. Peters, *supra*, the question arose with respect to the Saginaw, a river navigable for steam-vessels. The grantor, before conveying, platted the lands into lots and blocks, with distinct lines and distances, marking the boundaries of each lot, and with the water boundary of the river lots indicated by a line representing the shore line. He conveyed by this plat. It was held that these facts did not limit the grant to the shore line or operate to reserve to the grantor rights in front of the lots conveyed. *In the absence of an express reservation*, the grantee took the land under the water to the center of the stream. Judge Cooley, speaking in behalf of the Court, said: When the grantor "conveys with the water as a boundary, *it "will never be presumed that he reserves to himself proprie-"tory rights in front of the land conveyed*, which he may grant "to others for private occupation, or so occupy himself as to "cut off his grantee from the privileges and conveniences which "appertain to the shore of navigable waters. Such privileges "and conveniences constitute a part, and in many cases the "principal part, of the value of the grant; and it is precisely in "these cases of city lots that they are of most value, and gener-"ally constitute the chief inducement to the purchase; and "the chief, or at least a very important element, in determ-"ining the price. These cases, therefore, of all others are "those in which the reason of the rule which infers an intent "to convey the land under the water, is most apparent and "forcible."

In Turner v. Holland, 65 Mich., 453, complainants' lots were conveyed only by their numbers, according to the plat. On the plat they appear as bounded on one side by a bayou. The map showed the depth of the lots in feet and decimals of a foot to the bank of the bayou. It was held, nevertheless, that complainants took with their lots the riparian rights incident to the ownership of the bank.

In the two cases last cited there was fair room for argument that it might be presumed to be the intent of the grantor that the grant should stop at the water's edge, and yet the court would indulge no such presumption, but held that the grant

carried the soil under the water to the thread of the stream, unless a reservation was expressly proved. "There is but one "safe course," as the court say in Cole v. Wells, *supra*, "that "which gives to the owner of lands bounded by the bank or "waters of a stream or lake, the rights of a riparian propri- "etor, *unless the same have been clearly and unequivocally ex- "cluded.*"

In the case at bar neither the government nor any of Mr. Butler's grantors has shown an intent to limit the grant to the water's edge. Upon Bryan & Ball's plat it is expressly stated that the lots are bounded on the west by the middle of the channel of Grand River (p. 114); and, as we have seen, the parol assertions of title by Mr. Bryan, the proprietor, were to the same effect (Britton, pp. 301-302, q. 14-19; Butler, p. 124, q. 75.76). The deeds of the five and one-half lots to Mr. Butler were all by the lot numbers according to the recorded plat (pp. 115-116). It is true that two of the deeds, by way of locating the plat, state that the property lies between Water street and Grand River (pp. 345-347); but nothing can be clearer than that this does not operate as a limitation of or a reservation from the grant.

The authorities to which we have referred are sufficient to establish the proposition that, under the laws of Michigan, the riparian proprietors have always been conceded to be the owners of the beds of the rivers therein, subservient only to the public easement of navigation. Since the present cause was decided by the Supreme Court of the state there has come before that court the case of Grand Rapids v. Powers, 89 Mich., 94; in which the *locus in quo* lay but a short distance from the premises in controversy here. In that case was involved the right of the City of Grand Rapids, by ordinance passed pursuant to authority granted by the legislature, to establish a dock-line, beyond which the riparian proprietor could not build. The court held that no authority could be delegated to the municipality arbitrarily to establish such a line in that portion of the waters of the river not actually navigable. The case proceeds upon the proposition that the persons owning the

banks of the river in fee simple have the absolute property in the river bed, subject only to the public right of navigation. The court say: "We must remember that the riparian pro-"prietor in this state holds a different and more extended title "to the soil under the water of a navigable stream than he does "in many of the states of the Union. In this state he owns the "soil to the middle of the stream, and has the right to use his "land which is covered by water in any way he chooses, pro-"vided that he does not seriously injure the public use of the "stream, or obstruct or impede navigation, or damage other "riparian owners along the stream above or below him" (p. "104 of Opinion.)

The doctrine that the riparian proprietor takes title *usque ad filum medium aquae* seems generally to have prevailed from an early day in the states carved out of the Northwest Territory.

Lorman v. Benson, 8 Mich. 18, 33.
City of Janesville v. Carpenter, 77 Wis. 288.
Middleton v. Pritchard, 3 Scam. 510.
Gavit v. Chambers, 3 Ohio, 496.
June v. Purcell, 36 Ohio St. 396.

2.

A consistent line of authorities in Michigan supports the precise holding in this cause. We come now to consider the extent of the grant to the riparian proprietor, as bearing on the proposition whether it did or did not include this so-called island. From the proposition maintained in the preceding division of the brief, it follows as an inevitable consequence that the riparian proprietor by his grant acquired title to all

sand-bars lying between the meander-line and the thread of the stream, and that he acquired title to all lands existing in the form of islands rising out of the bed of the stream and lying between the meander-line and the center of the river, unless such lands were in some way excepted out of the operation of the grant. If such islands were in no way excepted out of the operation of the grant to the riparian proprietor, but passed with it, it would not, of course, be competent subsequently to set them apart and sell them to another.

Prior to the decision in the case at bar, there are at least two cases in Michigan which supports to the full extent our propositions upon this head. In Webber vs. Pere Marquette Boom Co., 62 Mich. 626, after the grant of the lands on the shore, a piece of land lying in Pere Marquette River or Lake was surveyed as an island under the authority of the Commissioner of the General Land Office, and as such was patented. The court refer to the fact that it has been the practice for the Commissioner of the General Land Office, upon application, and deposit of moneys to pay the expenses of the survey and other expenses, to order a survey of such islands as were omitted when the surveys were extended over the adjacent lands. With reference thereto it is expressly held, that, in order to give the commissioner jurisdiction to act, two facts must exist. *First*, There must have been an island which was omitted from the surveys when the adjacent territory was surveyed. *Second*, The land must not have been previously conveyed by the United States. And in that case it was held that the land in dispute had been previously conveyed; for it had passed to the riparian proprietor as appurtenant to his grant.

In Fletcher v. Thunder Bay etc. Boom Co., 51 Mich. 277, 282, it was claimed that certain middle ground in a stream was an island, a separate and distinct parcel of land, and as such would not pass under a deed as appurtenant to the shore lots. But the court held that, even if it were an island in fact, as claimed, inasmuch as it was nearer to the west shore than the

east, and the government never recognized or meandered any such ground in its survey, it would be appurtenant to the west shore, and pass to the grantee of the lots bordering on that shore.

So in Rice v. Ruddiman, 10 Mich. 125, 139, the court, per Christiancy, J., in speaking of Muskegon Lake, say: "If the "water continues so shallow as to render the lands under it "susceptible of beneficial private use to the center line of this nar- "row lake, then I have no hesitation in saying I think the ri- "parian ownership extends to such center line unless, indeed, "there may be intervening *islands which the government have "shown an intention to reserve from the grant of the mainland, "by surveying them as separate tracts*, in which case the riparian "ownership would extend only to the center line between the "island and the mainland."

We have at hand an address by Judge Cooley which touches upon this subject. His statement of the proposition is so clear that it must carry conviction to every mind. We offer his observations with deference, knowing that they are not authoritative in the sense in which the word would be applied, if they were uttered upon the bench, but believing that this court will attach to them that weight to which the learning and discriminating judgment of the author entitle them. He says: "If "an island was not surveyed as a government subdivision, pre- "vious to the sale of the bank, it is, of course, impossible to do "this for the purposes of government sale afterwards for the "reason that the rights of the bank owners are fixed by their "purchase. When making that they have a right to under- "stand that all land between the meander-lines, not separately "surveyed and sold, will pass with the shore, in the govern- "ment sale, and having this right, anything which their pur- "chase would include under it, cannot afterwards be taken "from them." Address before the Michigan Association of Surveyors and Civil Engineers. See Proceedings of said Association for 1883, p. 119.

Many of the facts in this cause are established by documentary proofs, and these were, in large part, introduced by plain-

tiffs in error themselves, and it lies not in their power to dispute them. From these unquestioned facts there spring two propositions which, independent of the mass of parol evidence on which we rely, are conclusive of this case :

First. If the government does not meander or survey an island, and indicate its intention to set it apart, it passes as appurtenant to the grant of the lands on shore.

Second. The land so passing as appurtenant to the shore cannot, at a subsequent time, be surveyed and sold as an island.

3.

The same principle is uniformly recognized and maintained in the States where the common law doctrine of riparian rights prevails.

Before proceeding to the rules of law as recognized in this court, we wish to refer to some cases in the State courts which are so analagous to the case at bar that they would of themselves suffice to determine this controversy, unless it be true that these courts have misapprehended and misconceived not only the law of riparian rights, but also the scope of their own constitutional powers.

In Chandos v. Mack, 77 Wis., 573, the question arose as to the title to an island in the Wisconsin River, a navigable stream. Plaintiff's intestate claimed title as the owner of the lands on the west bank of the river, opposite the island in controversy. The island lay nearer the west bank than the east. It was about 1,250 feet in length, and varied in width from 70 to 350 feet, was of rocky formation, covered with a thin sandy

soil, and was originally covered with timber, which had been removed. It was not overflowed in ordinary freshets, and was substantially submerged only in extraordinary floods. It contained between two and three acres of land. There was then confessedly an island in fact. When the general government, by its agent, surveyed and platted the lands on the bank of the stream, it made no survey or plat of the island or any part of it, but *the island was referred to in the field notes of the meandered line, and the location of the island was marked upon the government plat of the survey of the lands opposite thereto, so that the fact of its existence was not overlooked by the agents of the government when the surveys were made.* It was held, under the circumstances here presented, that the title to the unsurveyed island passed to the purchaser of the lands on the shore. "The inference," the court say, "certainly is very strong, when the government "leaves a small island in a navigable river, lying between the "shore and the middle of the stream, unsurveyed, and sells all "the surveyed islands, and all the lands on both sides of the "river, that it intends to abandon all rights to such unsurveyed "island, and let it pass to the riparian owners of lands on the "river as an incident to its grant."

In Granger v. Avery, 64 Me. 292, the plaintiff claimed title to an island lying in the St. Croix River, above tide-waters, by virtue of his ownership of the lands lying on the bank of the stream opposite the island. The island was sixteen rods wide and sixty-five rods long. The deed to his grantors of the lands on the bank of the stream was executed Jan. 28th, 1793, by the Commonwealth of Massachusetts; but on Sept. 29th, 1794, the Commonwealth assigned to a tribe of Indians, under whom defendant claimed title, certain lands in St. Croix River, among which this island, Grass Island by name, was expressly included. It was held that the plaintiff, as riparian proprietor, owned the island to the extent of the length of his lands upon it. "It is apparent," the court say, "that the title to Grass "Island did not pass to the Indians of the Passamaquoddy tribe "by the agreement made with the Commonwealth of Massach-"usetts, because that Commonwealth had already parted with "its title to the same."

We call attention to the decision in Middleton v. Pritchard, 3 Scam. 510, and with the more confidence *because that case and the language of the court therein have, as we shall see hereafter, been in express terms approved by this court.* That case involved an island or peninsula in the Mississippi River separated from the main-land by a slough. The government surveyor did not mark or map the island and slough upon the plat of the survey, but traced the courses and distances along the margin of the slough next to the main-land, in order to estimate the quantity of land in the fraction, which estimate did not include the island—the *locus in quo.* The court held that all grants bounded upon a river not navigable at common law entitle the grantee to all lands lying between the main-land and the center thread of the current, and that, therefore, the purchaser of public lands on the Mississippi River obtains the unsurveyed islands therein between such lands and the middle of the stream. They say: "Where the government has not reserved "any right or interest which might pass by the grant, nor done "any act showing an intention of reservation, such as platting "or surveying, we must construe its grant most favorably for "the grantee, and that it intended all that might pass by it," (p. 519.)

The principle for which we contend is supported by the following authorities in addition to those previously cited.

Lunt v. Holland, - - - 14 Mass. 149
Canal Commissioners v. People, - - 5 Wend. 423
(per Chancellor Walworth, pp. 444-445).
Ingraham v. Wilkinson, - - 4 Pick, 268
Halbert v. Edens, - - - 5 Lea 204
Fuller v. Dauphin, - - - 124 Ill. 542
St. Paul S. & T. F. Co. v. First Division etc.
R. R. Co., - - - 26 Minn. 13
Black's Pomeroy on Water Rigths § 224.

The title to a portion of the bed of the Cumberland River, a stream navigable in fact, was involved in Williamsburg Boom Co. v. Smith, 84 Ky. 372. A patent was granted in 1801 for lands upon the north side of the stream; and in 1815 a patent

was granted for lands upon the south side of the stream. Each called for the river and its meanders. In 1837 another patent was granted for the bed of the river only. It was held that the grants of land upon this river, being above tide-water, vested the right to the soil *ad filum aquae* in the grantee, unless the terms of the grant clearly showed an intention to stop at the margin of the river; and that, therefore, the patent for the bed of the river conflicted with the two former patents to riparian proprietors, and was void as embracing land previously granted.

In Michigan, as we have seen, the right of the riparian proprietor is the same whether the stream is or is not navigable in fact. Two comparatively recent cases are, therefore, in point: Lamprey v. Metcalf, 53 N. W. Rep. 1139 (Minn.) and Stoner v. Rice, 121 Ind. 51. These cases involved the title to portions of the beds of non-navigable lakes. In each case the United States patented to purchasers lands upon the shores of the lake, and subsequently as the waters of the lake receded made a new and corrective survey of portions of the bed of the lake lying within the former meander-line. The General Land Office then issued patent for the description called for by the new survey, but such patent was in each case held void as issued without jurisdiction, title to the bed of the lake having already passed under the terms of the original grant.

4.

The rule of property as enunciated by the State Court determines the effect of the grant.

Under the principles of law recognized and applied by the courts of Michigan the grant of the lands on the bank of the

river included the *locus in quo*. This court recognizes the right of the courts of Michigan to determine for itself this question. If the boundary of land granted by the United States is a fresh water river, it is declared by the repeated decisions of this court, that the effect of the grant is such as is given to such grants by the laws of the state.

Hardin v. Jordan, 140 U. S. 371.
St. Louis v. Rutz, 138 id. 226.
Packer v. Bird, 137 id. 661.
Shively v. Bowlby, 152 id. 1.
Barney v. Keokuk, 94 id. 338, 337.
St. Louis v. Myers, 113 id. 566.

In Hardin v. Jordan, *supra*, this court, being called upon to consider the extent of a grant made by the United States to a riparian proprietor, say: "This question must be decided by some rule of law, and *no rule of law can be resorted to for the "purpose except the local law of the state of Illinois.* If the "boundary of the land granted had been a fresh-water river, "there can be doubt that the effect of the grant would have been "such as is given to such grants by the laws of the state, ex- "tending either to the margin or the center of the stream, ac- "cording to the rules of that law," p. 380. And again, "In our "judgment the grants of the government for lands bounded on "streams and other waters, without any reservation or restric- "tion of terms, are to be construed as to their effect according "to the law of the state in which the lands lie," p. 384. In this case there was a dissenting opinion filed, but this also approved the principle above enunciated. Both opinions seek to follow the local law, but the Justices uniting in the minority opinion were of the belief that the Illinois courts applied to lakes a rule different from that confessedly prevailing in that state as to rivers, whether navigable in fact or not. And so in Packer vs. Bird, 137 U. S. 661, the court say: "As an incident of such "[riparian] ownership, the right of the riparian owner, where "the waters are above the influence of the tide, will be limited "according to the law of the State, either to low or high water mark, or will extend to the middle of the stream," pp. 669-670.

The following propositions are to be taken as conclusively established by these adjudications:

First. There is no uniform rule which can be applied to determine the extent of the operation of the particular grant.

Second. In that regard the local law, as declared by the highest court of the particular state, controls.

Third. If the State decides that, as an incident or right attached to the ownership of land granted by the United States on the bank of a stream, the title of the riparian proprietor extends to the thread of the stream, and includes whatever lies between the bank and the thread of the stream, then the United States courts will adopt the same construction.

In the various State courts where the question has arisen, it is, therefore, fully understood that they are left to determine, upon their own views of local law and local policy, the extent of the grant by the United States to the riparian proprietor.

Webber v. Pere Marquette Boom Co., 62 Mich., 626.
Grand Rapids v. Powers, 89 id., 94.
June v. Purcell, 36 Ohio St., 396, 406.
Hogg v. Beerman, 41 id., 81, 96.
Delaplain v. Railway Co., 42 Wis., 214, 225.
Olson v. Merrill, 42 id., 203, 211.
Norcross v. Griffiths, 65 id., 599.
Lamprey v. Metcalf, 53 N. W. Rep., 1139, (Minn.)
Webb v. City of Demopolis, 13 So. Rep., 289, (Ala.)
And so Kenyon v. Knipe, 46 Fed. Rep., 309, 314.
Black's Pomeroy on Water Rights, §224.

This court, therefore, expressly recognizes and enforces the right of the riparian proprietor, in states where the common law prevails, to

any island lying between the bank of the river and the thread of the stream, if it be not expressly reserved or set apart.

We aver, with full confidence in the correctness of our assertion, that the decision of the Supreme Court of Michigan in the case at bar is precisely sustained by the adjudications of this court. We call attention to the case of Railroad Company v. Schurmeir, 7 Wall. 272. Here a government grant was made of land in Minnesota. At the time of the survey, there was a parcel of land, called by counsel on one side a sand-bar, reef or tow head, and by counsel on the other side an island, lying along the shore of the river. It contained 2.78 acres, was 4 feet lower than the main body, and at very low water was separated from it by a slough or channel 28 feet wide, through which no water flowed, but in which water remained in pools. At a medium stage water flowed through the depression, making an island of the parcel. At high water the parcel was submerged. In the government survey no mention of this sand-bar or island was made in the field-notes, plat or map; and the surveyor, in meandering the course of the river along the fraction, ran the meander-lines along the main-land of the shore, and not along the line of the bar or island, and thus did not include the space occupied by the depression and bar or island in his estimate of the quantity of land contained in the fraction on the shore. The lands on the shore were conveyed under this survey. Afterwards and in 1856 (just about the time of the resurvey in the case at bar) the government caused this sand-bar or island to be surveyed, and it was platted or mapped as Island No. 11.

At a later date the so-called island was conveyed to the railroad company as a part of its land-grant under Act of Congress. Upon these facts the court held, that the parcel in controversy passed under the grant of the shore parcel. "Ar-"gument is scarcely necessary," they say, "to show that the "second survey of the space between block twenty-nine and "the main channel of the river, cannot affect the title of the "complainant as acquired from the United States under the "antecedent official survey and sale." This case explicitly de-

clares the principle that, in surveying fractional portions of the public lands bordering upon navigable rivers, the meander-lines are run, not as boundaries of the tract, but for the purpose of defining the sinuosities of the banks of the streams, and as a means of ascertaining the quantity of land in the fraction subject to sale, and which is to be paid for by the purchaser.

The same principle is asserted in Hardin v. Jordan, 140 U. S., 371. That cause is decisive of this, whether considered with respect to the doctrine enunciated or the language employed. It arose in Illinois. The land in question was part of the bed of a lake which, upon the plat of the surveyor, was marked "Navigable Lake," but which the court found to be non-navigable in fact. The decision is none the less in point here, because whether the stream is navigable or not, the rights of the riparian proprietor in Michigan to lands between the meander-line and the thread of the stream are the same. In the cause cited it was admitted by both majority and minority opinions that the question involved was to be determined by the laws of Illinois. The question was, whether the riparian proprietor took title to the bed of the lake to the center, or whether he took only to the water line. The majority opinion held that he took title to the center of the lake; that the doctrine of the common law is the same with respect to lakes as with respect to rivers; and that such common law doctrine prevails in Illinois. It appeared that, after the grant of the lands on the shore, proceedings were taken before the Register and Receiver of the Land Office in relation to the right of the government to survey and grant the lands under the lake. *The riparian proprietors were notified of these proceedings and appeared and made contest;* but the decision was against them and in favor of the government. It was contended that the matter was *res adjudicata*, and that the riparian proprietors were bound by the decision then made.

But the court said: "If the lands had been previously dis-"posed of, the department has no jurisdiction over them; and "the question whether they have, or have not been previously

"disposed of, is a judicial question, and not determinable by "the executive department, except for the purpose of govern- "ing its own conduct in the administration of its functions," p. 401. As bearing upon the extent of the grant by the United States and the right of the General Land Office to order new and corrective surveys, the court employ this language, which is peculiarly pertinent to the case at bar: "It has been the "practice of the government from its origin, in disposing of "the public lands, to measure the price to be paid for them by "the quantity of upland granted, no charge being made for the "lands under the bed of the stream, or other body of water. "The meander-lines run along or near the margin of such "waters are run for the purpose of ascertaining the exact quan- "tity of the upland to be charged for, and not for the purpose "of limiting the title of the grantee to such meander-lines. It "has frequently been held, both by the Federal and State "courts, that such meander-lines are intended for the purpose "of bounding and abutting the lands granted upon the waters "whose margins are thus meandered, and that the waters "themselves constitute the real boundary," p. 380. * * * "*It has never been held that the lands under water, in front of "such grants, are reserved to the United States, or that they can "be afterwards granted out to other persons, to the injury of the "original grantees. The attempt to make such grants is calcu- "lated to render title uncertain, and to derogate from the value "of natural boundaries, like streams and bodies of water,*" (p. 381.)

In division 3 of this argument it has been noted that the courts of Illinois extend the title of the riparian proprietor to the middle of the main channel of the Mississippi River. The doctrine of the courts of Illinois is the same as that of the courts of Michigan in this regard. The case in which that principle was established as the law of Illinois is Middleton v. Pritchard, 3 Scam. 510, an authority which, beyond dispute, exactly sustains the decision of the Supreme Court of Michigan in the case at bar.

In Hardin v. Jordan, *supra*, this court quote and expressly approve the language of the Supreme Court of Illinois in Middleton v. Pritchard, as follows: "The consequence of this doc-"trine is, that all *grants, bounded upon a river not navigable by "the common law, entitle the grantee to all islands lying between the "main-land and the center thread of the current. And we feel "bound so to construe grants by the government, according to the "principles of the common law, unless the government has done some "act to qualify or exclude the right.*" Opinion, page 384. The court further refer to the fact that these views were strongly approved by Chancellor Kent in the last edition of the Commentaries prepared under his own supervision. We are at a loss to know how the doctrine for which we contend could be more explicitly approved and upheld by this court. The same construction is applied to grants by government as to grants by individuals, and the very principle which controls and disposes of this case, is announced in almost the very terms employed by the Michigan Supreme Court. (Record, p. 387.)

Equally applicable to the facts in the case at bar are the principles enunciated in Mitchell v. Smale, 140 U. S. 406. The essential facts were the same as in Hardin v. Jordan, *supra*. But this should be noted: In Mitchell v. Smale, the tract originally patented consisted of a fractional quarter section, containing only 4.53 acres. At the time of the original survey and patent, and at the lime of trial, there was a tongue of land extending out beyond the surveyed land into the lake, containing about 25 acres. After the United States issued patent to the riparian proprietor, a new or corrective survey was made of this tongue of land, and a patent therefor was issued by the General Land Office. The decision of this court was in favor of the riparian owner, and the effect thereof was to give to the riparian purchaser of the four acre parcel the title not merely to the land covered by the original survey, but to the 25 acres of dry land outside the survey, as well as to a large area of land under the lake. The majority of the court in their opinion, say:

"We think it a great hardship, and one not to be endured, "for the government officers to make new surveys and grants "of the beds of such lakes after selling and granting the lands "bordering thereon, or represented so to be. It is nothing more "or less than taking from the first grantee a most valuable, and "often *the* most valuable part of his grant. Plenty of specula- "tors will always be found, as such property increases in value, "to enter it and deprive the proper owner of its enjoyment; and "to place such persons in possession under a new survey and "grant, and put the original grantee of the adjoining property "to his action of ejectment and plenary proof of his own title, is "a cause of vexatious litigation which ought not to be created "or sanctioned," Opinion, pp. 412-413.

This language applies with apt and peculiar force to the case at bar. If no island had ever been surveyed where Island No. 5 is now claimed to exist, there is no question but that it would be held to be included within the terms of the grant to Lyon and Hastings of the land upon the shore. If this be true, then clearly, under the principles laid down in the foregoing case, it is incompetent to make a subsequent or corrective survey which will divest the title of the riparian proprietor.

Under the principles of law as asserted by this court, the rights of the riparian proprietor are the same, whether the island existed when the survey was made and was omitted therefrom, or has been formed since the making of the original survey and the grant by the United States thereunder. In St. Louis v. Rutz, 138 U. S. 226, the City of St. Louis, as owner of an island lying west of the center of the Mississippi river, claimed by accretion to and as part of that island, land lying east of the thread of the main channel of the river. It was held that the island so formed belonged to the riparian proprietor on the Illinois side of the stream. The court say: "As the "law of Illinois confers upon the owner of land in that state "which is bounded by or fronts on the Mississippi river, the "title in fee to the bed of the river to the middle thereof, "or so far as the boundary of the state extends, *such riparian "owner is entitled to all islands in the river which are formed*

"*on the bed of the river east of the middle of its width*," p. 250. "It is well settled that the owner in fee of the bed of "a river, or other submerged land, is the owner of any bar, "island, or dry land which subsequently may be formed "thereon," p. 247.

That this doctrine is applicable to sand-bars existing in the stream, which, by accretion thereto, or in other manner, in process of time become islands, is also sustained by

Jones v. Soulard, 24 How. 41.
Berry v. Snyder, 3 Bush, 266.
Deerfield v. Arms, 17 Pick., 41, 43.
Griffin v. Kirk, 47, Ill. App., 258.

The cases of Shively v. Bowlby, 152 U. S. 1, and Packer v. Bird, 137 U. S. 661, recognize and proceed upon the proposition that the question of the extent of the rights of the riparian proprietor is one which each state is to determine for itself, and are in harmony with the other decisions of this court.

The authorities upon which we rely are precisely applicable to this case. It it be true that there was in fact no island at the place in question when the survey was originally made—and such, we think. is shown to be the case by the evidence adduced—then, we think, our right to a decree will not be disputed. If there was an island, but it was not meandered, surveyed and set apart as such, then also are we entitled to prevail. It is most conclusively shown that there was no attempt to set aside or reserve an island on the site now in question. The test is whether the *locus in quo* was surveyed as a lot, separate from the lot on the shore opposite thereto. It is clear that this was not done or attempted until long after the rights of the riparian proprietors attached. The government agents passed it, not once, but twice. They had an opportunity to survey the spot—if there was an island in fact—in 1831, when they meandered and surveyed the east bank of the stream. They came again in 1837, and surveyed the west bank of the stream and the four islands in it. The survey of the river, the islands in it and the adjacent township on both sides of the stream was then complete. As yet there was no attempt to sur-

vey or set apart an island where No. 5 is now said to lie. The lands were put upon the market and sold in accordance with the original surveys. They passed into the hands of pnrchasers in good faith, who relied upon the correctness of the surveys so made. It is now too late to attempt a reservation where none was made at the time.

As appears in Chandos v. Mack, 77 Wis. 573, it was formerly the practice of the Land Office to survey islands omitted from the original survey, but this practice has been abandoned because it has been found disadvantageous to the public interest, and applications for such surveys are no longer entertained. In other words, the government has found that, in the long run, it pays to be honest, and that sharp practice on its part has the inevitable result of shaking the confidence of the people, who are the purchasers of the public domain. Take the case at bar. The practice here pursued is repugnant to the first principles of business morality and fair dealing. It is not one whit more honest than if the Commissioner of the General Land Office had endeavored to take from Mr. Butler his property by force. The attempt to acquire his property was by artifice rather than by force. A court of equity should look with no favor upon an attempt to disturb titles to property in order to include the same within the limits of a land-grant. This in particular where it is apparent upon the face of the proceedings that the Congress supposed that it was donating wild lands in the heart of a wilderness to promote the settlement thereof, not that it was disposing, for a nominal consideration, of property within a few rods of the center of a thriving city.

This court has never hesitated, when proper occasion arose, to repudiate these re-surveys which disturb and divest vested rights. It does but common justice to hold that the government is bound by the original survey. It has been the uniform holding of this court that, where the General Land Office has once made and approved a government survey of public lands, the plats, maps, field-notes and certificates having been filed in the proper office, and has sold or disposed of such lands, the

courts will assume and exercise the power of protecting the private rights of a party who has purchased in good faith from the government against the interferences or appropriations of subsequent corrective surveys made by the Land Office.

Cragin v. Powell, 128 U. S. 691.

Lindsey v. Hawes, 2 Black 554.

Bates v. Illinois Central R. R. Co., 1 id. 204.

The Supreme Court of Michigan recognizes and upholds the same principle.

Burt v. Busch, 82 Mich. 506.

It is argued by plaintiffs in error that the government did not survey Islands 1, 2, 3 and 4 when the east bank was surveyed in 1831, and that this shows an intent on the part of the government to reserve all the islands in the stream. The survey of that part of the township lying west and north of the river was not completed until 1837, and these four islands were also surveyed at that time. The legal *status* of these four islands is not involved in this suit, and consideration of it is entirely foreign to the present inquiry. It is evident, however, that there is a palpable distinction between the case of those islands and the so-called Island No. 5.

The survey of the entire township was not complete in 1831, but it was fully completed in 1837. The utmost that can be urged in behalf of the right of the government to segregate these islands from the main-land is this: that the rights of the riparian owners on the east bank to any islands on that side of the stream would attach, subject to the right of the government to designate or set aside as islands parcels of land which were in fact such, at any time prior to the completion of the survey of the entire township. The government, acting through its agents in that behalf, did, before the completion of the survey and subdivision of the lands in the township lying on the west side of the river, assert a right to segregate from the lands on the shore and to set aside as islands the parcels designated as Islands 1, 2, 3 and 4. Whether it was justified in so doing, is not a question which arises here. But it is clear to a demonstration that the government did not claim or assert the right

to survey and set apart as an island the *locus in quo* which is now referred to as Island No. 5. And when these agents went over the ground a second time, and actually surveyed and set aside certain islands which they thought could be fitly designated as such, it showed in the most unmistakable manner an intent to abandon all such as they did not then undertake to reserve. Not only do the acts of the government agents at this time give evidence of an intent not to segregate Island No. 5 (as it was afterwards called) from the grant of the lands on the shore, but those acts show to the certainty of demonstration that those agents did not believe that there was upon the site of the *locus in quo* a formation which could be fitly designated or characterized as an island in fact. If any reservation, setting aside or designation of an island was to be made, clearly it was to be made by those agents or not at all, and the government is bound by their determination in that regard.

In every river there are formations which vary in character, from generation to generation, perhaps from year to year, and which may be fitly designated as islands, sand-bars or middle grounds, according as they may be affected by the operation of the current, the action of the ice, the stage of the waters of the stream or various other causes. In states where, as in Michigan, the doctrine of the common law is maintained in its full vigor, these formations, whatever their character, pass under the grant to the riparian proprietor, unless they be islands in fact and actually be surveyed, designated and set apart as such in due season to be excluded from the grant to the riparian proprietor. This proposition is clear under the unbroken line of decisions to which we have called attention. It is equally clear that, when the government agents, acting within the strict limits of their official duties, have once determined the character of such formations, it does not lie within their competency subsequently to revise or reverse it to the detriment of those who have acquired rights under an antecedent survey and sale. The government agents did determine the character of the *locus in quo*, and did, as conclusively shown by the documentary proofs, arrive at

the conclusion that its character was such that it could not justly be characterized or dignified as an island in fact, and, therefore, they neglected and refused to segregate it from the lands on the shore and survey it as a separate tract. The surveyor in 1831 made no attempt even to outline a separate or distinct formation in the river on the spot where Island 5 was afterwards claimed to lie. In 1837 the formations in the river which, in the opinion of the deputy surveyor, could properly be designated or characterized as islands were surveyed and marked as such. It was thereby endeavored to save or reserve to the government those four islands, *but nothing more.* And as we have seen, the surveyor computed and set down on his plat the acreage of all islands in this town (Map Exhibit B, marked 618). He stated, in effect, in so many words, that those formations in the river fit to be characterized as islands comprised 14.60 acres and that the *locus in quo* could not justly be included under that denomination. His attention was particularly called to the exact spot in question (Map 618), and he recorded it, in effect, as his determination that such spot was not then an island, and for that reason was to be excluded from the survey of islands which he was then making. The determination respecting the character of the precise spot now in question appears upon his map, (Defendant's Exhibit B, marked also 618) in words and figures so plain as to preclude all possibility of misunderstanding; and this determination of the deputy surveyor was approved by his superior officer, the surveyor-general, on April 30, 1838, (see map 618.) The distinction between such a case and that of Islands 1, 2, 3 and 4 is so marked as to be striking in its significance. If the intent of the then government agents is to have weight, the mind is driven irresistibly to the conclusion that there was no intent whatever to set apart an island upon the site in question. If it was competent for the authorities of the Land Office for the first time to survey and set apart an island in 1855, it was competent for them to do it at any later time. As was well said by the court below: "It would also "follow, that, if the government had not already surveyed and

"sold this island, it might do so now," (p. 388.) Surely such doctrine is fraught with the utmost peril to the security of private property.

What we have said above is a full consideration of the points raised by the first, second, third, fourth, fifth, sixth, seventh and eighth assignments of error. These assignments raise the questions as to the extent of the grant to the riparian proprietor, and the validity of the survey of 1855 and the patent subsequently issued thereunder, (pp. 412-413.)

6

By the ninth assignment of error it is contended that this suit is a proceeding to cancel a patent, which can only be brought by the government itself (p. 413). It is scarcely possible that this point is seriously urged.

The objection which we raise to the patent under which plaintiffs in error claim, goes to the jurisdiction of the General Land Office to issue such patent. It was incompetent to make the grant to the railroad company for the reason that the land had been previously conveyed to the riparian proprietors. There was no subject-matter upon which the commissioner had authority to act. No principle is better settled than that, if the lands patented are not at the time public property, having been previously disposed of, the department has no jurisdiction to transfer them, and their attempted conveyance by patent is inoperative and void, no matter with what seeming regularity the forms of law have been observed. In such case, the patent may be impeached collaterally in any action.

Hardin v. Jordan, 140 U. S. 371.
Davis v. Weibbold, 139 id. 507.
Knight v. U. S. Land Association, 142 id. 161, 176.
Smelting Co. v. Kemp, 104 id. 636.
Steel v. Smelting Co., 106 id. 447.
Webber v. Pere Marquette Boom Co., 62 Mich. 626.
Crapo v. Township of Troy, 98 id. 635.
Williamsburg Boom Co. v. Smith, 84 Ky. 372.
Stoner v. Rice, 121 Ind. 51.
Lamprey v. Metcalf, 53 N. W. Rep. 1139, (Minn.)

7

The bill was drawn to raise the precise questions which have been presented upon the argument.

By the tenth, twelfth and thirteenth arguments of error (pp. 413-414), it is insisted that, under our bill of complaint, we are confined solely to the question of fact, whether there did or did not exist an island in fact when the original survey was made; and that, if we desire to insist that, if an island existed, it would pass in any event because not set apart by the government, we must be driven to a new suit for that purpose. These are several conclusive answers to this suggestion.

a. This is not, in any sense of the term, a Federal question. It is merely a question arising with respect to the form of the bill. Upon familiar principles this court has, therefore, no jurisdiction to determine the question. If any one of the defenses urged in the State court does not constitute a Federal question, this court will refuse to review the action of the State

court thereon, but will hold the decision of the highest court of the State to be conclusive.

Stryker v. Goodnow, 123 U. S., 527.

Chapman v. Goodnow, 123 id., 540.

In the cause last cited this court refused to consider whether the court below erred in allowing a county to intervene as a party to a pending suit. It is apparent that in the case at bar it is not sought by the three assignments of error above mentioned to review a Federal question. The question is simply whether the averments of the bill are sufficiently full and distinct to warrant the relief granted; and this is a question which is to be determined according to the principles of equity practice as applied in Michigan, taken in connection with the statutes of amendment and jeofail in that State.

b. The State Court saw no merit in this contention on the part of plaintiffs in error. But they justly added, "The de-"fendants have not been prejudiced or surprised, and if the de-"fendants were technically correct, an amendment would be "granted in this court to conform to the proofs," (Record, p. 389). It was for that court, while the cause was there pending, to say whether an amendment should or should not be allowed. This court will not undertake to review that ruling.

c. But it is not the fact that we asked for a decree upon a theory not foreshadowed by our bill. We have departed not a jot or tittle from the case made by the bill or the theory upon which it was filed. We did not charge in the bill that the premises in dispute were an island in 1831, because we did not believe that such was the case; but we did employ terms which were adequate to embrace the claims which we made upon the hearing in the *nisi prius* and appellate state courts and which we now make.

The bill referred in the most exact terms to the precise situation of the *locus in quo*. It was referred to as a "sand-bar" or "piece of ground" definitely located at the precise point in controversy. It was averred that it was not surveyed in 1831, 1832, or for many years thereafter, but that the said "sand-bar or piece of ground" passed to Lyon and Hastings as appurte-

nant to the lands on the easterly bank (pp. 3-5). Again it is designated for greater certainty as "a piece of middle ground" lying between the easterly bank and the thread of the stream (p. 4), and as "a sand-bar or piece of middle ground" (p. 4). Certainly an averment that the piece of ground in question passed to Lyon and Hastings under their grant, is broad enough to sustain our position that it passed, if unsurveyed, whatever its character, be it sand-bar, middle ground or island. One of the terms used in the bill to designate the so-called island, the expression "middle ground," is the very term employed by the court in Fletcher v. Thunder Bay Boom Co., 51 Mich., 277, 283. In Railroad Co. v. Schurmeir, 7 Wall., 275, a bill was filed by the riparian owner against the railroad company to raise precisely the same question as in the case at bar; and we find it alleged by complainant's counsel that the land in dispute was a "sand-bar, reef or tow-head," while counsel for defendants alleged it to be an island. This court found no difficulty in unanimously arriving at the conclusion that this piece of land, whatever its character, passed under the grant to the riparian proprietor. The bill in this cause was drawn after examination of almost every case cited in this brief, and which had then been decided, and in particular reliance upon the two cases last cited and Webber v. Pere Marquette Boom Co. 62 Mich., 626-635.

d. The answer of defendants in the State Court was expressly framed to meet this point, viz. that even if the spot in question were an island, it had passed to the riparian proprietor because not reserved.

Their answer states: "They deny that the island in ques-
"tion was sold by the United States as appurtenant to the lands
"lying on the easterly bank; that there was nothing in the sur-
"vey, or in the patent, indicating that there was included in the
"land on the east bank of the river, any of the islands opposite
"thereto, nor any land whatever except the main-land itself.
"And they submit that, if it was not surveyed and set apart by
"the United States Government at the time the main-land was
"surveyed and meandered, that it would not follow that the

"government intended to abandon it to the complainant's grant-"ors, or to any other person.

"They severally deny that the said Lyon and Hastings ob-"tained any title to the said island by virtue of the patent of the "main-land opposite thereto," (p. 13).

This indicates as clearly, as language can, that, when plaintiffs in error prepared their answer, they intended to put in issue and make express denial of our claim that the riparian grant would include an island if not surveyed; and that they relied upon the proposition that, notwithstanding such grant, it was within the competency of the agents of the government to survey islands in the river whenever it chose to do so.

e. If the contention of plaintiffs on error upon this head is correct, then it is necessary to bring two suits, instead of one, to test this title. They say in substance: Mr. Butler must bring and try one suit upon the claim that he is entitled to the *locus in quo* because it is a sand-bar or piece of middle ground. If defeated in that, he may then bring another suit upon the claim that he is entitled to the *locus in quo* as an unsurveyed island. Surely this is the *reductio ad absurdum*. The doctrine contended for is unknown to the books, and commends itself to no one save the lover of a multiplicity of suits. We know of no principle which forbids one to rely in the same suit upon two cognate propositions of law. Upon both principle and the authorities referred to are entitled to rely upon these two propositions:

First. We insist that in the year 1831, when the survey was made, there was in fact no island. If so, clearly the riparian proprietor has title to any island subsequently formed.

Second. Even if there was an island in fact at that time, yet inasmuch as it was not surveyed and set apart by the government, it passed as appurtenant to the grant of the lands on the shore.

These propositions are not only simple, but closely allied, and we believe that this one lawsuit, now extended over a period of nearly eight years, is adequate to the proper determination of them.

8.

THE SCRANTON ABSTRACT AND TRACT-BOOK.

Another technical point with respect to the proofs is endeavored to be made by the eleventh assignment of error, (p. 413.) It is alleged that the court erred in determining that the entries as to the Lyon and Hasting patent on the Scranton abstract and the tract-book "made out a *prima facie* case of the contents of the patent to Lyon and Hastings, and that the burden of proof was then shifted to the defendants to show a reservation, if any were made." In this title there was an unusually large number of conveyances, covering a period of some sixty years. Mr. Butler showed an unbroken title from government down. In the peculiar condition of our records, he proved his title in a manner in which not one title in twenty, involving an equal number of conveyances, can be proved in Kent County at this day. The point made by plaintiffs in error is, for several reasons, destitute of merit.

a. The ruling of the State Court was with respect to the weight to be given to the "Scranton Abstracts" under the law authorizing their use. It was decided that the effect of the introduction of the abstract was to make out a *prima facie* case, and shift the burden of proof to defendants. Clearly there is here no Federal question. The question relates solely to the effect of the state statute and to the burden of proof. Upon the principle before alluded to, this court will not attempt to review such ruling on the part of the state tribunal.

Murdock v. City of Memphis, 20 Wall., 590.
Stryker v. Goodnow, 123 U. S., 527.
Chapman v. Goodnow, 123 id., 540.
Michigan v. Flint & Pere Marquette R. Co., 152 id., 363.
N. Y. & N. E. Railroad Co. v. Woodruff, 153 id., 689.

b. We introduced in evidence the original Scranton abstract. It showed the patent in question, and that it covered the north fraction of the southeast quarter of section 25, township 7 north, range 12 west (page 338-339). The patent was issued November 5, 1833, and recorded September 26, 1849. In January, 1860, the records of Kent county, in which the property in question is situated, were destroyed by fire. The book in which the patent was recorded was burned in the fire, and, therefore, the record of it could not be produced (pp. 116-117, 109).

The record of this patent was proved just as every burned record has been proved in Kent county since the year 1865. In that year the legislature passed an act making this very Scranton abstract a public record and evidence of the matters therein stated. This act provided as follows:

"Whereas, A large portion of the records of the county of "Kent were destroyed by fire in the year eighteen huudred and "sixty;

"And whereas, An abstract of said records had previously "been made, under the direction of Leonidas Scranton, formerly "Register of Deeds of said county;

"And whereas, The said abstract has been purchased by "the board of supervisors of the aforesaid county, and is now "deposited in the office of the Register of Deeds of said county, "as the property thereof;

"Section 1. The People of the State of Michigan enact, "That the said abstract be and the same hereby is declared to "be and established as a public record, and in all the courts in "this State, and in all suits and proceedings therein, and before "all officers of this State, having jurisdiction in such suits and "proceedings, and shall be *prima facie* evidence of the matters

"therein stated, and shall have the same virtue and effect as by "present provisions of law, the records of the office of register "of deeds do possess."

Michigan Laws of 1865, Act. No. 315, p. 667.

The ruling of the State Court was in accord with the plain language of the legislative enactment. Furthermore it cannot be questioned but that that court has the right to put its own construction upon that enactment.

c. It was urged in the state courts that the court would presume a reservation of Island No. 5 from the operation of the grant. This is a remarkable proposition. *The court is asked to presume*, not only without proof, but *against the proof, the reservation from the patent of an island which was not surveyed or meandered, and which had no legal existence for nearly a quarter of a century after the patent was issued.* We say that the court was asked to make this presumption against the proof: for the Scranton abstract gave the full description of the land granted. When that abstract, a public record, declares that the patent covered the north fraction of the southeast quarter of section 25, it means just what it says, without any exception or reservation whatever. A contrary holding would disturb and throw into inextricable confusion all titles within the limits of that county.

The field-notes and plats introduced in evidence certainly show just where the north fractional half of the southeast quarter lies and what is included in it. But no proof of any kind upon this point was necessary under the pleadings. Defendants' answer expressly admitted (p. 13) that the premises mentioned in the bill were originally a part of the north fractional half of the southeast quarter of section 25; that this parcel was bounded on the west by Grand River; that the river runs as alleged in the bill; that opposite these lands on the shore there lay this piece of ground which they allege was an island. They admit that the island was not surveyed when the east bank was surveyed (p. 13); and they also admit that the island was surveyed by Mr. Whelpley at or about the time mentioned in the bill (p. 14), There is no question but that the so-called island

lay east of the thread of the stream. Under the rules laid down in the authorities cited, these admissions are equivalent to a confession in terms that the so-called island passed as appurtenant to the grant of the lands on the shore. The presumption of law is precisely contrary to what plaintiffs in error seemingly suppose. In states where the common law prevails, the owner of the bank of a navigable stream, by purchase from the United States, is presumed to be the owner to the middle or thread of the stream.

Norcross v. Griffiths, 65 Wis. 599.

And the express and consistent holdings of the Michigan Supreme Court are, we have seen, to this effect.

Watson v. Peters, 26 Mich. 508.
Turner v. Holland, 65 id. 453.
Cole v. Wells, 49 id. 450.

d. *But an exception or reservation from the patent will not be presumed for the reason that the General Land Office had no authority to make one.*

As bearing upon the contention that it rested upon Mr. Butler to show that the officers of the Land Department had not excepted or reserved the bed of the stream, or unsurveyed islands from the operation of the grant to Lyon and Hastings, there is an additional reason why he is not called upon, as part of his *prima facie* case, to disprove an affirmative defense. It is the accustomed practice of the Land Office to execute a patent for each parcel of land, according to the description thereof as it appears in the records of the office. We know of no statute under which the General Land Office has the right to make any exception or reservation from the lands granted, and, in the absence of specific authority therefor, such exception or reservation would be null. In Davis' Administrator v. Weibbold, 139 U. S. 507, 527, an exception was inserted in a grant of mining lands, and the court say: "*We do not attach any importance to the exception, for the officers "of the Land Department, being merely agents of the government, "have no authority to insert in a patent any other terms than than "those of conveyance,* with recitals showing compliance with the

"conditions which the law prescribes. Could they insert "clauses in patents at their own discretion, they could limit or "enlarge their effect without warrant of law. The patent of a "mining claim carries with it such rights to the land which in- "cludes the claim as the law confers, and no others, and these "rights can neither be enlarged or diminished by any reserva- "tions of the officers of the Land Department, resting for their "fitness only upon the judgment of those officers."

e. For another reason it is not open to plaintiffs in error to say that Mr. Butler did not show a grant from the government of the half quarter section which included the *locus in quo.* The actual sale by the United States, as against third parties at least, is evidenced, not by the issuing of patent, but by entry from government. It is entirely clear that an action to remove cloud from title might be maintained by the riparian proprietor, if he showed merely that his grantor entered the lands, even though he was unable to show the issuing of patent. It is a well known fact among the profession in Michigan that, for a large proportion of the lands in that state, no record of the patent itself can be shown. Reliance is had upon the tract-book. Plaintiffs in error, for some purpose of their own, proved by the deputy register of deeds the fact that the north fractional half of the southeast quarter was sold to Lyon and Hastings, on Sept. 25th, 1832, as alleged in our bill (Van Aalderen, p. 320, q. 32-36). This was sufficient to establish the title of Lyon and Hastings as riparian proprietors, even if no further proof had been made by Mr. Butler with respect thereto. In the evidence thus adduced by plaintiffs in error themselves, there is no suggestion of an exception or reservation. However exacting and finical they may be with reference to our proofs, surely the court will not listen to their denial of a fact which they themselves established by their own proof. If there was no reservation in the sale as evidenced by the tract-book, there could have been none in the patent: for the patent would, of course, be issued for the description as sold.

f. We have adverted to the care with which, upon the trial, Mr. Butler traced back his title to government. But his

showing of title was in any event sufficient without tracing it back to government. His undisputed claim of title to the north fractional half of the southeast quarter of section 25 went back far beyond the time of the survey of the alleged island in 1855. There was not an exception or reservation in the chain of title so proved.

All titles in Michigan are supposed to have been granted or originally recognized and confirmed by the government, and the proof as made was sufficient evidence of Mr. Butler's title as claimed.

Gamble v. Horr, 40 Mich., 561.
Loomis v. Roberts, 57 id., 284.

g. *But it is not claimed that there was in fact any exception or reservation in the patent to Lyon and Hastings.* Not a scintilla of proof supports the suggestion that there was. All the documentary proofs offered show that there was none. It is merely argued that, in addition to the legal proof which we did offer, we ought to have presented cumulative proofs upon the same point. This is an objection which it is peculiarly within the province of the *nisi prius* court to pass on, and which would in no event be held fatal on appeal. It is also an objection which ought to have been definitely presented in that court. So far from it, there is no controverted question in the case as to the issuing of the patent to Lyon and Hastings. There is no denial in terms in the answer that such patent was issued in form and at the time as charged in our bill of complaint. If the point had been definitely made and the trial court had attached any importance whatever to it, additional or supplemental proof would, without doubt, have been permitted. But the point is destitute of merit for the many reasons above indicated.

It is possible that we have touched at undue length upon the objections which go merely to the form of the bill and the burden of the proof. We do not believe that such objections are properly before this court, nor that they have any foundation, either in law or in fact. But as they were urged in the State

Appellate court, and error has been assigned upon the rulings thereon, we suppose it to be incumbent upon us to consider them.

The state trial and appellate courts adopt in their decisions the rule of law which is fortified and sustained by wise considerations of public policy. That rule, we respectfully submit, is supported by a consistent line of authorities in the various state jurisdictions and the adjudications of this court.

ROGER W. BUTTERFIELD,
WILLARD F. KEENEY,
Counsel for Defendant in Error.

Office Supreme Court, U. S.
FILED.
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CLERK

Supreme Court of the United States.

OCTOBER TERM, 1894.

No. 198.

THE GRAND RAPIDS AND INDIANA RAILROAD COMPANY, THE CONTINENTAL IMPROVEMENT COMPANY, WILLIAM H. BARNES, AND THE PHILADELPHIA TRUST, SAFE DEPOSIT AND INSURANCE COMPANY, PLAINTIFFS IN ERROR,

vs.

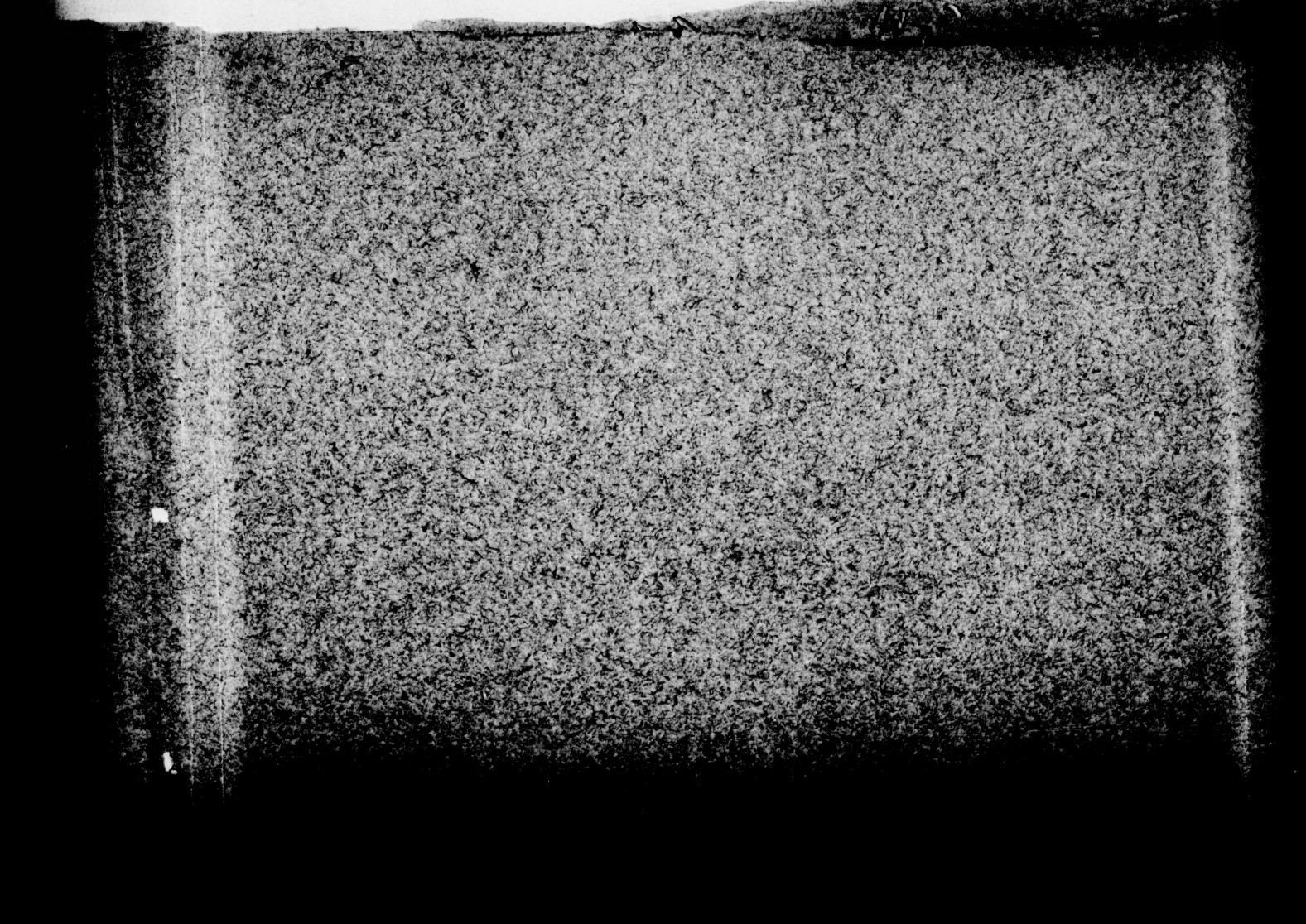
JOHN BUTLER.

ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

SUPPLEMENTAL BRIEF FOR DEFENDANT IN ERROR.

ROGER W. BUTTERFIELD,
WILLARD F. KEENEY,
Counsel for Defendant in Error.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.



IN THE

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ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

SUPPLEMENTAL BRIEF FOR DEFENDANT IN ERROR.

Since our brief in behalf of the defendant in error was placed in the hands of the printer we have received from the clerk of this Court a copy of the brief of counsel for plaintiffs in error. There are a few points referred to therein upon which it is our desire to offer some suggestions:

1.

It is claimed by counsel in his brief that the west bank of Grand river was meandered, not in 1831 but in 1837. He refers to this point several times (brief for plaintiffs in error, pp. 8, 11, 15, 16, 17, 19), as if it were really a matter of some importance in determining the rights of the parties to this suit. He says in fact that he regards it as a material point; but how or why it is material he fails to state, and we are left to grope in the dark respecting his reasons.

a. To one familiar with the conduct of this cause in the State courts there is somewhat of the ludicrous in this claim. In the State supreme court counsel for plaintiffs in error strenuously insisted that both banks of the river were meandered in 1831. A positive assertion to that effect is found on page 7 of his brief filed in that court. Again, on page 18 of the same brief he discusses elaborately the field-notes of the meanders of the stream, going down the river on the west bank. He solemnly asseverates: "*These "field-notes were made in* 1831, *six years before any of the islands "was surveyed,*" and he predicates upon this proposition an argument which would be utterly destitute of meaning if the proposition were not correct in point of fact.

In his brief filed in this Court the same counsel, without a ray of additional light, precisely contradicts his former statement of fact. He says that the State court was guilty of a very material error, in that that court, without attaching any particular importance to the fact, casually refers to both banks of the river (Record, p. 405) as having been meandered in 1831. (See brief of plaintiffs in error, pp. 8–11.) In other words, *counsel criticises the State supreme court because it seems to have believed his own solemn assertion of fact to be true.*

b. Whether the attitude of counsel is an entirely gracious one, we leave to himself to determine. This much is certain: the point, if it were true, can in no possible manner aid the claims of plaintiffs in error to the premises in controversy. We do not understand that this Court will attempt to review the decision of the State court upon a mere question of fact. This rule applies with peculiar force and fitness when the finding of fact is made by the State court at the urgent instance and request of the plaintiffs in error themselves. Therefore we shall not attempt a formal discussion of the proposition. Let us, however, briefly advert to just what was said by the State court in this regard. The court simply said: "The grant to Lyon and Hastings was made "under the survey of 1831, by which both banks of Grand river "were meandered, and by which the middle thread of the "river was fixed west of this island" (Record, p. 405). Plaintiffs in error certainly will not dispute the proposition that the middle thread of the river was west of the so-called island; nor is there any doubt but that, as shown by the survey of 1831, the middle thread of the river was west of the site where such island was afterwards surveyed. *The map* (marked 619, annexed to record) *shows that both banks of Grand river were mapped and platted in 1831.* The work, it is stated thereon, was done in the first and second quarters of 1831; and the surveyor-general, under date of February 2, 1832, certifies that this map is "strictly conformable to the field-notes." (See map marked 619.)

c. Much is said respecting the alleged Indian title to the lands on the west bank of Grand river. We fail to see the pertinency of the observations upon this head. It may be that we mistake the trend of the argument, but it seems to us to be grounded upon the proposition that the United States did not own the lands on the west bank of the river, but that the Indians did until 1836. On the contrary, we suppose it to be true that the title of the United States is to

be traced to the treaty of peace of 1783 and to the cessions made by the various States composing the confederation. We do not understand that it can fitly be said that the mere fugitive right of occupancy, which was partially tolerated as a part of our policy towards the Indians, gave them the ownership of the soil, or that the title of the United States takes its origin only in the extinguishment of that fugitive right.

We understand plaintiffs in error in their brief to argue that the west (or north) bank of Grand river was not meandered in 1831, because the United States at that time did not have title to any lands, save those south of the stream (brief of plaintiffs in error, pp. 14–16, 8, 11). They explicitly state to the court (Brief, pp. 41, 15) that prior to 1836 the Government had acquired the Indian title only to those lands which lay southeast of Grand river, and ask the court to draw the conclusion (Brief, p. 43) that the Government did not acquire the islands in the stream nor the premises now in controversy until 1836.

Notwithstanding the slight importance which is to be attached to the extinguishment of this alleged Indian title, we cannot allow a statement of fact so erroneous to remain uncontradicted, nor a conclusion so far from the truth to remain unrebutted. The making of such assertion can be pardoned only upon the supposition that counsel has not read the earlier treaty to which he refers in his brief (p. 15 of such brief). By the treaty made at Chicago on August 29, 1821, the Ottawa, Chippewa, and Pottawatamie nations of Indians ceded to the United States the lands within the following boundaries: Commencing at a point on the south bank of the St. Joseph river, thence along certain courses therein mentioned to the source of the Grand river or to a point of crossing thereof near such source, "*thence down the said river on the north bank* "*thereof to the mouth;* thence following the shore of Lake "Michigan to the south bank of the said River St. Joseph "at the mouth thereof, and thence with the said south bank

"to the place of beginning" (U. S. Statutes at Large, vol. 7, p. 218). This cession includes within its limits all islands in the stream and everything south (or east) of the north (or west) bank of the river, and yet an extended argument is gravely addressed to the Court grounded upon the propositions that the United States had no title to any islands in the river prior to 1836 and no authority to survey any such, and that it had no legal right to meander the north (or west) bank of the stream at that time. This argument falls to the ground because based upon premises palpably erroneous.

The point endeavored to be made, therefore, in no manner touches the issue here involved. If the Indians had any title of the fugitive and transitory character above designated, that title attached only to lands lying west of the west bank of the river. The extinguishment of that title had, therefore, nothing to do with the right or title of the United States to the premises now in dispute; nor did it in any manner affect the right of the Government to run the line of the west (or north) bank of Grand river, to which its title expressly extended, unembarrassed by any Indian claim, if it saw fit to do so.

2.

There is throughout the brief of plaintiffs in error a most painful and manifest desire upon the part of the counsel to argue the cause of the owners of Islands 1, 2, and 3. He prefers this rather than to dwell upon the facts and circumstances to which we have adverted in our original brief and which so conclusively establish the proposition that there was prior to 1855 no attempt to survey, designate, or set apart Island 5 or to segregate it from the grant of the mainland. In his anxiety to show that there was prior to the completion of the survey of the entire township a survey of Island 5, he says: "There is very good reason, upon the facts "which appear upon this record, to suppose that in 1837 *the*

"*surveyor, Whitcomb, made no distinction between Island* 3 *and* "*Island* 5, *but surveyed them together as one island.*" (Brief, p. 63.)

What is this but a confession that the patent issued pursuant to the new and corrective survey of 1855 is void? Does counsel claim the right to take from the owners of Island 3, by virtue of a later survey, a portion of their grant? If not, here is, in effect, a plain confession by counsel for plaintiffs in error that the land which forms the subject-matter of this suit does not belong to his client; but he couples this with a declaration that it belongs, not to defendant in error, but to the owner of Island 3.

We are entitled to deduce from this statement in the brief these conclusions:

a. It is an admission of the absolute necessity of a survey of the premises in question prior to the completion of the survey of the township, in order to except or reserve such premises from the operation of the grant of the lands on the easterly bank.

b. It is a distinct recognition of the fact that until long after the survey of 1837 not only was there no separate survey of Island No. 5, but there was no designation or setting apart of it as a separate parcel. If segregated in any manner from the lands on the shore, it was as part of Island 3.

c. It is an admission in point of law that the patent to the railroad company is of necessity to be held void, either in this suit or in another to be instituted by the owners of Island 3.

d. This is not an action of ejectment where plaintiffs' title only is in question. It is no hardship to plaintiffs in error to be compelled to release that which confessedly they are not entitled to retain.

e. We have all the time contended that the resurvey of 1855 did take in the portion of Island 3 containing the three big trees (our Brief, pp. 11, 17, 18, 19). The admission of counsel for the plaintiffs in error confirms that contention; but many facts appearing in the record show that Island 3, as surveyed in 1837, did not come far enough to the north to include any premises opposite the lands owned by Mr. Butler. The State court so determined (Record, p. 385), and its finding is amply justified by the record. We have referred in our original brief to the evidence upon this head, and shall only call attention to the relation which that evidence bears to this contention of plaintiffs in error.

1st. The field-notes show that a maple stood at the head of Island 3 (Record, p. 355). This was the tree which Doris cut down. It stood four or five feet south of the south line of lot 13, Bryan and Ball's subdivision (our Brief, pp. 9, 17, 19). The lots belonging to defendant in error are 5, 6, 7, 8, 9, and the north half of 13 (Record, p. 1). These lots, therefore, lie further north than the head of Island 3 (see city map annexed to record). There is not the sign of a stump nor any other indication that any tree ever stood further north than the one cut down by Doris.

2d. Our parol evidence was to the same effect. (Our Brief, pp. 17–19.)

3d. The field-notes distinctly show that north of the maple at the head of Island 3 were some willows growing in the stream, and that these were not included in the survey then made, but were purposely passed by and excluded from it. (Our Brief, p. 10.)

4th. The map of the survey of 1837 (marked 618) shows in the most unmistakable manner that Island 3 did not extend north to the quarter line—where Fulton street now is—

and that it did not come any further north than we have previously indicated.

5th. Even the owners of Island No. 3 do not claim that the notes of the surveyor can be extended far enough north to include any of the lands claimed by defendant in error. (Record, p. 326.)

3.

A considerable portion of the brief for plaintiffs in error is devoted to arguing that the State court erred in holding as matter of fact on this record that Island 5 was not reserved in the Lyon and Hastings patent. (Brief for plaintiffs in error, pp. 35–40.)

In our original brief we have referred to the evidence upon which this finding of the State court was based. This evidence establishes beyond the possibility of successful contradiction the fact that the Government agents did not intend to reserve or set apart Island 5. (Our Brief, pp. 8–10, 11–28, 53–56.)

The State court was most amply justified by the record in its finding of facts upon this point. That finding was as follows: "In the present case there is no act on the part of "the Government showing any intention to reserve this land. "The only inference which can be drawn from the facts is "that the Government agents, its surveyors, did not con- "sider it of sufficient value to survey. It was not surveyed "until about twenty-five years after the survey of 1831, and "not until nearly twenty years after the survey of 1837, "when the other islands and the lands upon the west bank "were surveyed, thus completing the survey in that region." (Record, p. 388). This Court, upon examination of record evidence and the oral proofs, must of necessity arrive at the same conclusion.

But we do not understand that this Court will undertake

to reverse this decision upon a question of fact. It is true that this is a chancery cause, but even in chancery cases we understand that the latest expression of opinion upon the part of this Court is that the Court will not review the decision of the State court when that decision specifically passes upon a question of fact.

Dower *vs.* Richards, 151 U. S., 658, 671.

California Powder Works *vs.* Davis, 151 U. S., 389, was an equity cause in which each party to a suit to quiet title claimed under a patent from the United States confirming a Mexican grant. It came into this Court upon writ of error to the supreme court of California. The judgment of that court rested upon the proposition of fact that the grant under which plaintiff in error deraigned title was simulated and fraudulent, and this Court dismissed the writ of error for want of jurisdiction.

And so, in so far as the decision in the cause at bar may be said to rest upon the proposition of fact that Island 5 was not reserved or excepted out of the operation of the riparian grant, we think this Court will not undertake to review it. If this Court should desire to review that determination of fact, we have full confidence that the result will not be to the prejudice of the defendant in error.

4.

It is said that Lucius Lyon, one of the purchasers of the lands on the east bank of the river, was the same person who surveyed the lands east of the river in 1831, and that it does not appear that he made any claim to Island 5 or that small portion of Island 3 which lies opposite the tract purchased by Lyon and Hastings (brief of plaintiffs in error, pp. 23, 44, 45). It is sought to draw from this the inference that Lyon consented to the segregation of Island 5 from the mainland and did not regard himself as having title thereto.

This is a remarkable proposition. Mr. Lyon, as the abstract shows, parted with his title to these lands in his lifetime (Record, pp. 109–113). Portions of the premises were deeded by Mr. Lyon in the thirties, and the last vestige of title to property in Grand Rapids passed out of him by assignment of all his property in that town in March, 1849 (Record, p. 339). But even if Lyon had continued to be the owner of lands on the shore, it can hardly be claimed that there was any omission of duty on his part until the distinct and positive assertion of an adverse title. Now Island 5 was not surveyed until 1855, and this survey seems to have been kept secret. No patent of such island was issued until 1871. Mr. Lyon died in 1852, and yet it is seriously charged in the brief of plaintiffs in error that he acquiesced in the assertion of an adverse title which had no inception until long after he had parted with his interest and after his death. Whether Lyon did or did not make claim at any time to Island 3 does not appear from the record. The question was not an issue in this suit and it is a matter of no consequence whatever.

But it is said that it does not appear that any claim to Island 5 was made by any grantee under Lyon and Hastings, except Bryan and Ball, until Butler began this suit in 1887 (brief of plaintiffs in error, p. 45). It does appear that the riparian proprietors have asserted all the title and right of possession to the so-called Island No. 5 which the nature of the property admitted. The fact that the site in question has not been described in their deeds as a separate parcel is but another link in the chain of evidence to show that it was not regarded as a distinct parcel, segregated from the lands on the shore. The descriptions employed were entirely adequate to include the premises now in question under the uniform line of decisions by the Michigan supreme court. (Our Brief, pp. 34–40.)

The audacity of the claim that the complainant and his

grantors have failed with proper diligence to assert the riparian title is seen from the following facts:

First. The grant to Lyon and Hastings was made in 1832, fifty-five years before the bill was filed.

Second. No island was surveyed on this site until 1855, twenty-three years after the entry, and this survey was kept from public knowledge.

Third. The patent to the railroad company was not issued until 1871. Butler did not hear of any adverse title until some time after this, nor does he appear to have known that a patent to the railroad company existed until the patent was recorded.

Fourth. The patent to the railroad company was withheld from record. It was not recorded until August 9, 1887 (*Record, p.* 349). *On September* 9, 1887, *the bill in this cause was filed.* Within one month after the first tangible assertion of an adverse title the facts were investigated, pleadings prepared, and this suit commenced. Not only has there been no omission to assert the riparian title to the premises in question, but much more than ordinary diligence has been exhibited in the assertion thereof.

Fifth. It is also to be borne in mind that ever since his title accrued Mr. Butler, by filling in with solid earth upon the premises in controversy, by fencing in such premises, by letting to tenants, by making gardens and raising vegetables, by sowing grass seed, by his continual claims of title, in every way, in fact, open to him, has maintained and asserted his title to the premises in dispute.

Laches cannot be imputed to one in possession for delay in resorting to a court of equity for relief.

Ruckman *vs.* Cary, 129 U. S., 387.
Mills *vs.* Lockwood, 42 Ill., 111.
Wilson *vs.* Byers, 77 *id.*, 76.
Michie *vs.* Ellair, 54 Mich., 518.

Sixth. It is to be borne in mind that the contention that Mr. Butler and his grantors have not, under the riparian title, asserted with sufficient diligence the claim to the premises in question is not before this Court; that question was raised by plaintiffs in error in the State court and was expressly decided against them as matter of fact (Record, p. 389), nor has any error been assigned upon such holding.

5.

TAXES.—In the brief of plaintiffs in error much is said by counsel with reference to certain taxes and assessments claimed to have been paid by the railroad company (Brief, pp. 29–31, 47). The State supreme court effectually disposed of this point (Record, pp. 389–390). No error is or could be assigned upon the finding of the State court upon this head. We know of no reason for giving to this subject the place which it occupies in brief of plaintiffs in error; but inasmuch as the subject has been introduced, we beg to state in a few words what the facts are in that regard.

The record shows a double assessment of the premises in dispute made at the request of the railroad company itself.

The lots owned by the defendant in error are Nos. 5, 6, 7, 8, 9, and the north half of 13, according to the plat as recorded. These lots have always been assessed by such numbers (Record, p. 300), according to the plat as recorded, which expressly extends the lots to the middle of the stream (Record, p. 114). So that the defendant in error has always paid the tax upon his lots according to the very description under which he claims title to them in his bill.

Mr. Britton, for some years supervisor of the First ward, in which these lands lie, was sworn as a witness in the case. From his testimony it appeared that the assessment came to be made in this way: Mr. Hughes, then general counsel for the railroad company, came to Britton's house after he had been elected supervisor and had com-

menced to assess the property in the ward, and had a talk with him about this piece of property claimed to be Island No. 5. Mr. Hughes stated to Britton that it belonged to the railroad company, and asked him to assess it to that company, and the assessment was made to the company in accordance with that request (Record, p. 301). The supervisor assessed it, as he says, for the benefit of the city at large (Record, p. 301). It is a significant fact, drawn out upon cross-examination, that at the same time Mr. Hughes spoke to the supervisor of other property of the railroad company which he claimed should be exempt from taxation. (Record, p. 302, Q. 25.)

When Mr. Butler first heard that the railroad company made any claim of interest in this land (p. 299, Q. 427) he saw the supervisor and talked with him about it (Record, pp. 297, 298). He requested the supervisor to assess it just as it had always been assessed before he heard of any claims on the part of the railroad company; told him he was willing to pay taxes on that property as he occupied it—clear to the river; gave him the description of the property and informed him that it ran to the center of the river. The supervisor told him, in response to his inquiry, that he assessed Island 5 to the company, and Mr. Butler replied that he was willing and able to pay his taxes and considered that his property. At another time Mr. Butler asked the supervisor if he continued to assess it to the railroad company. The supervisor replied that he did, but that it would make no difference to Butler; it would in no way affect him; it would give no title to the company. Mr. Butler asked him why he assessed it in that way—was he afraid about getting the taxes—and repeated his previous assertion—that he, Mr. Butler, was both willing and able to pay them. The supervisor's only response was that the railroad company had requested that an assessment be made against it, and that that was the reason he had done it (Record, p. 298). The testimony of Mr. Butler and of the supervisor, Britton,

is in no way disputed, and stands as the unquestionably correct recital of the facts as to the assessment.

Now, what more could Butler have done to guard his rights? He was assessed upon his property by the lot numbers. He took pains to inform the supervisor that the lots so numbered extended to the middle of the stream. The supervisor, to gratify the railroad company and to add to the valuation of his roll, assessed a portion of the property again under another description. For this Butler was in no way responsible. He did everything in his power to prevent it. It can in no way prejudice his rights.

With respect to the special assessment which it is alleged that the railroad company paid upon Island No. 5, it was not shown that Mr. Butler had any knowledge whatever of such circumstance. The State court so found as matter of fact, and briefly but effectually disposed of the contention of plaintiffs in error in that behalf (Record, pp. 389, 390). Such ruling is not open to review.

With respect to these taxes and assessments, which occupy so conspicuous a place in the brief of plaintiffs in error, although no error is assigned with respect to the ruling thereon, the decision of the State court was clearly right. It is a plain case of double assessment. Butler has paid all the taxes imposed upon the lots as claimed by him. He is in no way responsible for the duplicate assessment. The railroad company importuned the supervisor to make it, hoping thereby to secure an undue advantage. They have been vehement in their complaints that this piece of *finesse* has not redounded to their benefit. If they have lost the money so paid, it is through their own fault. Never was there a clearer case for the application of the doctrine that no one can obtain title to the land of another by voluntarily paying taxes upon it. We regret that we have been compelled to take up the time of the Court in the discussion of this matter which is *dehors* the present record; but inasmuch as plaintiffs in error have

gone out of their way to lay before the Court a partial view of the facts, we deem it not improper that we should state the ground upon which the decision of the State court was predicated.

6.

Plaintiffs in error spend a great deal of time arguing the necessity for particularity of averment. The argument is grounded upon the apparent supposition that the bill is filed to set aside a patent which the Land Office had acknowledged jurisdiction to grant and which is of unquestioned validity unless it can be avoided for fraud or mistake. This is not such a case. It is a case of conflicting grants. If the facts as claimed by us and as found by the State court are correct, not only was the Land Office without jurisdiction to act, but that want of jurisdiction appeared on the face of the records in the General Land Office; but in our original brief we have given to this subject all the consideration which it merits.

7.

In his brief the counsel for plaintiffs in error refers to some of the Michigan decisions. He quotes from the decision of La Plaisance, &c., Co. *vs.* City of Monroe, Walker's Chancery, 155. The reference to this case seems to be made for the purpose of causing it to appear that the supreme court of Michigan has not always maintained the common-law doctrine as stated in our brief, pages 34–40. Respecting the cause which is cited by counsel for this purpose, we remark: *1st.* It is not a decision of the Michigan supreme court. *2d.* Nor is it a cause coming up on appeal in any tribunal. It is a *nisi prius* case decided by a single judge or chancellor. *3d.* The remarks cited were *obiter dicta* merely. The judge delivering the opinion was speaking of the rights of certain complainants in the stream in question. "Yet these complainants," he said, "do not own the bed of

"the stream *or the land on either side of it.*" In other words, no riparian rights were involved in that decision, and the cause has not even the authority of a *nisi prius* tribunal on the point under consideration.

We invite a careful examination of the Michigan cases cited in our brief, with the utmost confidence that they will be found fully and unequivocally to support the position which we have taken upon this argument. It is true that the Michigan supreme court recognizes the right of the Government, at the proper time, to reserve and set apart as islands parcels of land which are in fact such. By a consistent line of authorities that court has indicated how and when such reservation should be made. On page 55 of his brief, counsel quotes the principle enunciated by Judge Christiancy, in behalf of the court, more than thirty years ago. This was in Rice *vs.* Ruddiman, 10 Mich., 125. But counsel breaks the quotation in two in the middle of a sentence and thereby destroys its full force. What the judge really said was this: "I have no hesitation in saying I think "the riparian ownership extends to such center line, unless "indeed there may be intervening islands which the Gov- "ernment have shown an intention to reserve *from the* "*grant of the mainland by surveying them as separate tracts.*" The words in italics are omitted from the quotation as given in brief of plaintiffs in error, page 55.

Apply that test to the present case. When did the Government survey Island 5 as a separate tract? Clearly not until 1855. The official records show it; the answer admits it (Record, p. 15). Under all the authorities, this was too late.

Nor is it the fact that Lorman *vs.* Benson was the first case in which the Michigan supreme court recognized the common-law doctrine of riparian rights as in force in that State. Norris *vs.* Hill, 1 Mich., 202, laid down that principle years before that time—several years, in fact, before the resurvey of 1855; and when the patent to the railroad com-

pany was issued, an unbroken line of Michigan cases upheld the principle for which we contend.

Counsel says that the case of Fletcher *vs.* Thunder Bay Boom Co., 51 Mich., 277, is not in point because the parcel in dispute was nearly or quite under water. It is true that it was in that case, as in the case at bar, made a question of fact whether there was or was not an island; but the Court passed not only on the question of fact, but also on the proposition of law. The decision is in these words:

"It is claimed by the plaintiff that the middle ground is "an island, a separate and distinct parcel of land, and as "such would not pass under the Bassett deed as appurte-"nant to the shore lots.

"Suppose the condition of the claimed 'middle ground' "to be as stated by counsel for plaintiff, still under the "evidence the point would be untenable. The island, as "claimed, is nearer to the west shore than the east. The "Government never recognized or meandered any such "ground out in its survey, and under such circumstances it "would be appurtenant to the west shore and pass to the "grantee of the ten lots bordering on that shore." (Page 283 of opinion.)

The case is none the less apposite and controlling because the decision is placed on both the law and the facts.

Plaintiffs in error seemingly contend that the principle applied by the Michigan supreme court in this cause is not of necessity upheld by the former decisions of that court. We have argued this point in our original brief (pp. 37–40), and we respectfully submit that the cases there cited do sustain the present holding. The State supreme court so interpret their own decisions. In their opinion, written in this suit (Record, p. 387), they formulate the proposition in these words: "When, therefore, the Government has sur-"veyed its lands along the bank of a river and has sold and

"conveyed such lands by Government subdivisions, its "patent conveys the title to all islands lying between the "meander line and the middle thread of the river, unless "previous to such patent it has surveyed such islands as "governmental subdivisions or expressly reserves them "when not surveyed." They cite Webber *vs.* Pere Marquette Boom Co., 62 Mich., 626, and Fletcher *vs.* Thunder Bay Boom Co., 51 Mich., 277, among other cases, as supporting this proposition.

Among other decisions of this Court, we intended in our original brief to cite Kaukauna Co. *vs.* Green Bay, &c., Canal, 142 U. S., 254, 272, as supporting the proposition that "the "law of the State, as declared by its supreme court, is controlling, as a rule, of property." By inadvertence it was omitted.

Respecting some minor propositions of fact contained in the brief of opposing counsel, we would add a few words. But the foregoing comments are all which we have been able to prepare in the short time which has elapsed since we received from the Clerk of the Court a copy of that brief.

ROGER W. BUTTERFIELD,
WILLARD F. KEENEY,
Counsel for Defendant in Error.

TRANSCRIPT OF RECORD.

159-95

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

Original, No. —.

EX PARTE: IN THE MATTER OF WILLIAM BELT, ALIAS WILLIAM JONES.

PETITION FOR THE WRIT OF HABEAS CORPUS.

FILED APRIL , 1895.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

Original, No. —.

EX PARTE: IN THE MATTER OF WILLIAM BELT, ALIAS WILLIAM JONES.

PETITION FOR THE WRIT OF HABEAS CORPUS.

INDEX.

	Original.	Print.
Warrant	1	1
Indictment	3	2
Arraignment and plea	6	3
Conviction	7	3
Sentence	8	4
Bill of exceptions	9	4
Record of police court	10	5
Order vacating suspension of sentence	11	6
Warrant for removal	11	6
Return of warden of District jail	12	6
Receipt of warden of penitentiary	12	7
Certificate of clerk	12	7

In the Supreme Court of the District of Columbia.

Transcript of Record.

To all [to] whom these presents shall come, greeting:

UNITED STATES OF AMERICA, }
DISTRICT OF COLUMBIA, } ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, among others were the following proceedings, to wit:

1 *Warrant.*

Filed in open court, February 5, 1894.

Aff. No. 29,161.

DISTRICT OF COLUMBIA, }
COUNTY OF WASHINGTON, } ss:

To the Marshal of the District of Columbia, greeting:

Whereas Isaac Cohn hath upon oath before us, judges of the police court of the District of Columbia, declared that on the twentieth day of January, A. D. 1894, at the county aforesaid, one William Belt alias Jones did feloniously steal, take, and carry away one coat of the value of *twelfth* dollars, all lawful money of the United States, of the goods and chattels of the said Cohn, against the form of the statute in such case made and provided, and against the peace and government of the United States; the said Belt alias Jones having heretofore, to wit, on the eighth day of April, A. D. 1893, been convicted in the police court of said District of the offence of petit larceny.

You are therefore commanded to take the said Belt alias Jones and bring h—— before the said police court forthwith to answer said charge.

Witness the Hon. Thomas F. Miller and the Hon. Ivorey G. Kimball, judge[s] of the police court, and the seal of said court, this third day of February, A. D. 1894.

[SEAL.] GEO. M. WASHBURN,
Deputy Clerk Police Court, D. C.

2 (Endorsement:) United States *vs.* William Belt alias Jones. Crim. No. 19,681. No. 75,248. Warrant. For petit larceny, second offence alleged. Feb. 3/94. Cepi: J. B. McCaffrey, Dep. U. S. Marshal. Witnesses: Isaac Cohn, 816 7th St. N. W.; Bessie Wood, 2 Nailor's alley; J. E. Barnes, M. P. Feb'ry 3rd, 1894. Plea not guilty. Held to await the action of the grand jury. Bonds $500.

3 *Presentment for second offence.*

Filed in open court, February 14, 1894.

In the Supreme Court of the District of Columbia, holding a Criminal Term.

DISTRICT OF COLUMBIA, COUNTY OF WASHINGTON, } *To wit. January Term, A. D.* 1894.

We, the grand jurors of the United States of America, in and for the District aforesaid, upon our oaths, do present one William Belt alias William Jones for second offence petit larceny of the goods mentioned in the warrant for his arrest, at the county and District aforesaid, on the 20th day of January, A. D. 1894.

This presentment made on the evidence of Isaac Cohn, Jos. E. Barnes, M. P., Bessie Wood.

FRANK PITZER, *Foreman.*

Second Offence: Petit Larceny.

Filed in open court, February 14, 1894.

In the Supreme Court of the District of Columbia, holding a Criminal Term.

DISTRICT OF COLUMBIA, COUNTY OF WASHINGTON, } *ss. January Term, A. D.* 1894.

The grand jurors of the United States of America, in and for the county and District aforesaid, upon their oaths, present: That one William Belt, otherwise called William Jones, late of the county and District aforesaid, on the eighth day of April,

4 in the year of our Lord one thousand eight hundred and ninety-three, was tried in the police court of the District of Columbia, on a charge of the larceny of property under the value of thirty-five dollars in the District of Columbia, the said court then and there having jurisdiction over said offence, and was by said court found guilty of said charge, and sentenced to be imprisoned thirty days in jail, which said judgment has not been reversed, and still remains in full force and effect.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present that the said William Belt, otherwise called William Jones, late of the county and District aforesaid, with force and arms on the twentieth day of January, in the year of our Lord one thousand eight hundred and ninety-four, at the county and District aforesaid, one coat of the value of twelve dollars of the lawful money of the said United States, of the goods, chattels, and property of one Isaac Cohn, then and there being, and in his possession found, feloniously did steal, take, and carry away against the form of the statute in such case made and provided, and against the peace and government of the United States.

ARTHUR A. BIRNEY,

Attorney of the United States in and for the District of Columbia.

5 (Endorsement:) No. 19,681. United States *vs.* William Belt, otherwise called William Jones. Second offence: petit larceny. Witnesses: Isaac Cohn, Joseph E. Barnes, M. P.; Bessie Wood. A true bill. Frank Pitzer, foreman.

Proceedings before the Supreme Court of the District of Columbia, holding a Criminal Court No. 1, for the trial of crimes and offences arising within the said District, at the January Term of the court for the year one thousand eight hundred and ninety-four, and of the Independence of the United States of America one hundred and eighteen.

6 January Second, 1894.

The court commences its session at ten o'clock in the forenoon by proclamation of the marshal, pursuant to the rule of court, the Honorable Louis E. McComas, one of the justices of the said Supreme Court, presiding.

Thursday, February 15, 1894.

The court resumes its session pursuant to adjournment, Mr. Justice McComas, presiding.

UNITED STATES *vs.* WILLIAM BELT alias JONES. } No. 19,681. Indicted for second offence, petit larceny.

Come as well the attorney of the United States as the defendant in proper person, in custody of the warden of the jail of the District of Columbia; and, thereupon, the defendant being arraigned upon the indictment he pleads thereto not guilty, and for trial puts himself upon the country, and the attorney of the United States doth the like.

Tuesday, February 20, 1894.

The court resumes its session pursuant to adjournment, Mr. Justice Cole, presiding.

7 UNITED STATES *vs.* WILLIAM BELT alias WILLIAM JONES. } No. 19,681. Indicted for petit larceny, second offense.

Come as well the attorney of the United States as the defendant, in proper person, in custody of the warden of the jail of the District of Columbia, and by his attorney J. W. Walker; whereupon comes a jury of good and lawful men of the District of Columbia, to wit: O. L. Pitney, John Hessel, Charles Hampson, Dan'l F. Lee, Thomas Chase, J. H. Albers, W. B. Green, Max Kaufman, W. L. Brawner, Benonie Millstead, M. J. Sauter, and Philip W. Burch, who, being sworn, well and truly to try the

issue above joined upon their oath, say that the defendant is guilty in manner and form as charged in the indictment; and, thereupon, the defendant is remanded to jail to await further proceedings in this cause. It is ordered that the property in this case, to wit, one coat, be restored to Isaac Cohn, from whom it was stolen.

Saturday, March 10, 1894.

The court resumes its session pursuant to adjournment, Mr. Justice Cole presiding.

UNITED STATES
vs.
WILLIAM BELT alias WILLIAM JONES. } No. 19,681. Convicted of petit larceny, second offence.

Come again as well the attorney of the United States as the defendant, in proper person, in custody of the warden of the jail of the District of Columbia; and, thereupon, it is immediately demanded of the defendant what further he has to
8 say why the sentence of the law should not be pronounced against him, and he says nothing, except as he has already said; whereupon it is considered by the court that for his said offence the defendant be taken by the warden aforesaid to the common jail from whence he came, thence to the Albany County Penitentiary, in the State of New York, there to be imprisoned and kept at labor for the period of three (3) years to take effect from date of arrival at said penitentiary, whereupon an appeal to the Court of Appeals is noted and allowed, and execution of sentence suspended until the decision of said Court of Appeals in this cause.

Memorandum: 1894, March 16.—Citation to Court of Appeals issued.

Bill of Exceptions.

Filed March 20, 1894.

In the Supreme Court of the District of Columbia,
holding Criminal Court No. Two.

UNITED STATES
v.
WILLIAM BELT, otherwise known as WILLIAM JONES.

Be it remembered that on the trial of this cause the government, to maintain the issues on its part joined, gave evidence tending to show that the defendant is sometimes known as William Belt and sometimes as William Jones, and that on
9 the 20th day of January, 1894, in the said District, he did steal and carry away one coat, mentioned and described in the indictment in this cause, of the value of $12.00, lawful

money of the United States, of the goods and chattels of one Isaac Cohn, mentioned in said indictment, and thereupon said United States, to further maintain the issues on its part, offered in evidence a record of the police court of the said District of a conviction in that court of *petit* larceny of William Belt on the 8th day of April, 1893, and proved that the said William Belt mentioned in the record of said police court is the same person mentioned as the defendant in the indictment in this cause. But the defendant's counsel interposed and objected to the admission of said record, on the ground that the statute authorizing the defendant to waive a jury trial in the police court of the District is unconstitutional, and that said court had no jurisdiction to try said cause without a jury, and that said record is, therefore, void; but the court overruled the said objection and permitted the said record to be given and read in evidence to the jury, in the words and figures following:

No. 70,632.

In the Police Court of the District of Columbia.

April Term, 1893.

UNITED STATES
vs.
JOHN NEWTON and WILLIAM BELT. } Information for larceny.

Defendants arraigned. April 8th, 1893. Plea: Not guilty. Jury trial waived. Judgment: Guilty. Sentence: To be imprisoned 30 days in jail, each com.

MAR. 19, 1894.

I hereby certify under the seal of this court that the foregoing is a true copy of the proceedings had in the police court in the above-entitled case.

[SEAL.] GEO. M. WASHBURN,
Dep. Clerk Police Court, Dist. of Columbia.

And to the judgment of the court in overruling said objection, and admitting said record in evidence, the said defendant, by his counsel, then and there, and before the jury retired to consider their verdict, excepted, and said exception is signed, sealed, and made a part of the record in this case, now for then, this 19th day of March, 1894.

CHAS. C. COLE, [SEAL.]
Asso. Justice.

Saturday, March 31, 1894.

The court resumed its session pursuant to adjournment, Mr. Justice Cole presiding.

UNITED STATES
vs.
WILLIAM BELT alias WILLIAM JONES. } No. 19,681. Convicted of petit larceny, second offence.

It is ordered that the suspension of execution of sentence in this cause made March 10, 1894, be and the same is hereby vacated, and the warrant of removal is this day ordered issued; which is accordingly done.

11 *Warrant for Removal.*

Filed April 10, 1894.

In the Supreme Court of the District of Columbia,
the 31st day of March, 1894.

THE UNITED STATES
vs.
WILLIAM BELT alias WILLIAM JONES. } No. 19,681. Criminal Docket.

The President of the United States, to the warden of the United States jail for the District of Columbia, greeting:

Whereas the said defendant has been indicted for the crime of petit larceny, second offense, and has been lawfully convicted thereof, and judgment of the said court has been given that the said William Belt alias William Jones be imprisoned and kept at labor in the Albany County Penitentiary, State of New York, for the period of three (3) years, to take effect from date of arrival at said penitentiary:

Therefore you are hereby commanded to take the said William Belt alias William Jones now in your custody being, and him safely convey to the said penitentiary, and there, together with the transcript of record accompanying this writ, deliver him into the custody of the warden of said penitentiary, for the purposes mentioned in said sentence, and for so doing this shall be your sufficient warrant; and having so done, take the receipt of said warden for said prisoner, and return this writ into the office of the clerk of the Supreme Court of the District of Columbia, so indorsed as to show the due execution thereof.

Witness: E. F. BINGHAM, *Chief Justice of said Court.*
JOHN R. YOUNG, *Clerk,*
[SEAL.] By F. W. SMITH, *Assistant Clerk.*

12 (Endorsement:) No. 19,681. Criminal docket. United States *vs.* William Belt alias William Jones. Warrant for removal to Albany Co. Penitentiary. Executed the within warrant by delivering said convict to the warden of the Albany Penitentiary as per his receipt hereto attached. John R. Leonard, Warden U. S. Jail, D. C.

Receipt.

Office of the Warden of the Albany Co. Penitentiary, New York, the 4th day of April, 1894.

Received of Mr. John Leonard, warden of the United States jail in and for the District of Columbia, the body of the within named William Belt alias William Jones under sentence of three (3) years in the said penitentiary, to take effect from date of arrival at said penitentiary.

JAMES McINTYRE, *Sup.*,
pr AUGT. BOWNS.

Memorandum.

September 25, 1894.—Mandate from Court of Appeals affirming judgment—filed.

Authentication of Record.

SUPREME COURT OF THE DISTRICT OF COLUMBIA:

I, John R. Young, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals, together, constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court, this 22d day of April, 1895.

[SEAL.] JOHN R. YOUNG, *Clerk.*

I, Edward F. Bingham, chief justice of said court, do certify the foregoing attestation by John R. Young, clerk of the said court, to be in due form.

Witness my hand and seal this 22d day of April, 1895.

E. F. BINGHAM, *Chief Justice.*

I, John R. Young, clerk of said court, hereby certify that the Honorable Edward F. Bingham, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court, this 22d day of April, 1895.

[SEAL.] JOHN R. YOUNG, *Clerk.*

Supreme Court of the United States.

OCTOBER TERM, 1894.

ORIGINAL No. ——

Ex parte: In the Matter of William Belt, alias William Jones.

Petition for the Writ of Habeas Corpus.

BRIEF FOR THE PETITIONER.

GEO. KEARNEY,
PERRY ALLEN,
Attorneys for Petitioner.

MERGENTHALER TYPESETTING CO., LAW PRINTERS WASHINGTON, D. C.

Supreme Court of the United States

OCTOBER TERM, 1894.

ORIGINAL No. ——

Ex parte: In the Matter of William Belt, alias William Jones

Motion for leave to file petition for the writ of *habeas corpus*.

Now comes the petitioner, by his counsel, and moves this Honorable Court for leave to file his annexed petition praying for the writ of *habeas corpus* directed to James McIntyre, Superintendent of the Albany County Penitentiary, in the State of New York; and asks that a rule may be issued upon the said Superintendent to show cause why the writ of *habeas corpus* should not be granted him.

GEO. KEARNEY,
Of Counsel for Petitioner.

Supreme Court of the United States

OCTOBER TERM, 1894.

ORIGINAL No. ——

Ex parte: In the Matter of William Belt, alias William Jones

Motion for leave to proceed in *forma pauperis*.

And now comes the petitioner, by his counsel, and moves this Honorable Court for leave to proceed in *forma pauperis* as to costs, the record and briefs in this cause having been already printed.

GEO. KEARNEY,
Of Counsel for Petitioner.

Mary Belt, being duly sworn, deposes and says that she is the mother of William Belt, alias William Jones, the petitioner in this cause, and that the said petitioner is a pauper, and totally without means to prosecute his rights.

her
MARY X BELT.
mark

Witness as to mark:—Jesse W. Rawlings.

Signed and sworn to in the presence of Jesse W. Rawlings, a Notary Public in and for the District of Columbia, this 26th day of April, A. D. 1895.

[Seal]

JESSE W. RAWLINGS,
Notary Public, D. C.

Supreme Court of the United States

EX parte: In the Matter of William Belt, alias William Jones

Petition for the writ of *habeas corpus.*

The Honorable The Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully showeth as follows: He is a citizen of the United States, and a resident of the District of Columbia. On the 8th day of April, 1893, he was convicted in the Police Court of the District of Columbia upon a charge of petit larceny, which said conviction was had *without a jury trial*, (Record, p. 5), contrary to the provisions of Section 2 of Article III of the Constitution of the United States, which declares that "The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury."

At the January Term, 1894, of the Supreme Court of the District of Columbia, holding a criminal court, the grand jurors of the said District indicted the petitioner for a second offence of petit larceny, which said indictment was filed in open court on February 14, 1894, (Record, p. 2). Petitioner pleaded thereto not guilty, (Record, p. 3,) and on February 20th, 1894, the jury returned a verdict of guilty as charged in the indictment, (Record, pp. 3-4).

Whereupon on March 10, 1894, petitioner was sentenced to be imprisoned at labor for the period of three years in the Albany County Penitentiary, in the State of New York, (Record p. 4,) being the penalty prescribed by Section 1161 of the Revised Statutes of the United States relating to the District of Columbia, for a second offence of petit larceny therein.

As appears from the bill of exceptions taken at the trial, (Record, pp. 4-5,) the Government, to maintain the issues on its part, offered in evidence the record of the Police Court hereinbefore mentioned of the petitioner's conviction therein of a first

offence of petit larceny, but the petitioner's counsel then and there objected to the admission of said record, on the ground that the statute authorizing the defendant to waive a jury trial in the Police Court of the District of Columbia is unconstitutional, and that the said court had no jurisdiction to try said cause without a jury, and that said record is therefore void; but the court overruled the objection and permitted the said record to be read to the jury in the words and figures following:

No. 70,632.
IN THE POLICE COURT OF THE DISTRICT OF COLUMBIA.
April Term, 1893.

UNITED STATES,
vs.
JOHN NEWTON and WILLIAM BELT.
} Information for Larceny.

Defendants arraigned April 8th, 1893. Plea: Not Guilty.
Jury trial waived. Judgment: Guilty. Sentence: To be imprisoned 30 days in jail, each com.

An appeal being taken from the judgment of the Supreme Court of the District of Columbia to the Court of Appeals of said District, the latter court affirmed the judgment, (Record, p. 7). Petitioner was removed to said penitentiary, (Record, p. 6,) and received by the superintendent of that institution on the 4th day of April, 1894, (Record, p. 7,) and is now in his custody.

Now your petitioner showeth that the Supreme Court of the District of Columbia was without jurisdiction to try and convict him of a second offence of petit larceny, for that his previous conviction in the Police Court of said District of a first offence of petit larceny was void and of no effect in law, because contrary to the provisions of Section 2 of Article III of the Constitution of the United States, in violation of which he is unduly restrained of his liberty.

Your petitioner therefore prayeth that the writ of habeas corpus may issue from this court, directed to James McIntyre, Superintendent of the Albany County Penitentiary, in the State of New York, commanding him to produce the body of your petitioner with the day and cause of his caption and detention, to do, submit to, and receive whatsoever the court shall consider in that behalf.

And this your petitioner will ever pray.

WILLIAM BELT,
BY His Attorneys, GEO. KEARNEY,
PERRY ALLEN.

Mary Belt, being duly sworn, deposes and says that she is the mother of William Belt, alias William Jones, the petitioner in this cause, and that she believes the statements in his petition for the writ of *habeas corpus* to be true.

her
MARY X BELT,
mark

Witness as to mark:—Jesse W. Rawlings.

Signed and sworn to in the presence of Jesse W. Rawlings, a Notary Public in and for the District of Columbia, this 26th day of April, A. D. 1895.

[Seal] JESSE W. RAWLINGS,
Notary Public, D. C.

ARGUMENT.

The contention of the petitioner is, briefly, that the trial, without a jury, in the Police Court of the District of Columbia, of offences which are crimes at common law, is in violation of Section 2 of Article III of the Constitution of the United States, which declares that "The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury."

Section 2 of the act of Congress approved March 3, 1891, entitled "An act to define the jurisdiction of the Police Court of the District of Columbia," (26 Stat. p. 848, c. 536,) declares:

" That prosecutions in the police court shall be on information by the proper prosecuting officer. In all prosecutions within the proper jurisdiction of said court in which, according to the Constitution of the United States, the accused would be entitled to a jury trial the trial shall be by jury. And also in all prosecutions in which such person would not be by force of the Constitution of the United States entitled to a trial by jury, but in which the fine or penalty may be fifty dollars or more or imprisonment for thirty days or more, the trial shall be by jury unless the accused shall, in open court, expressly waive such trial by jury, and consent to a trial by the judge, in which case the trial shall be by such judge, and the judgment and sentence shall have the same force and effect in all respects as if the same had been entered and pronounced on the verdict of a jury. In all cases not hereinbefore in this section provided for, the trial shall be by a judge."

This section of the act of 1891 was amended by an act of Congress approved July 23, 1892, entitled "An act to amend 'An act to define the jurisdiction of the police court of the District of Columbia,' approved March third, eighteen hundred and ninety-one," (27 Stat. p. 261, c. 236,) to read as follows:

"Sec. 2. That prosecutions in the Police Court shall be on information of the proper prosecuting officer. In all prosecutions within the jurisdiction of said court in which, according to the Constitution of the United States, the accused would be entitled to a jury trial, the trial shall be by jury, unless the accused shall in open court expressly waive such trial by jury and request to be tried by the judge, in which case the trial shall be by such judge, and the judgment and sentence shall have the same force and effect in all respects as if the same had been entered and pronounced upon the verdict of a jury. In all cases where the accused would not by the force of the Constitution of the United States be entitled to a trial by jury, the trial shall be by the court without a jury, unless in such of said last-named cases wherein the fine or penalty may be fifty dollars or more, or imprisonment as punishment for the offense may be thirty days or more, the accused shall demand a trial by jury, in which case the trial shall be by jury. In all cases where the said court shall impose a fine it may, in default of the payment of the fine imposed, commit the defendant for such term as the court thinks right and proper, not to exceed one year."

In view of the fact that the language of the Constitution is explicit that "the trial of all crimes, except in cases of impeachment, shall be by jury," it is urged upon the court that Section 2 of the act of 1891 was, and the act of 1892 amending the same, is, unconstitutional and void, inasmuch as they direct a change in the mode of "the trial of all crimes, except in cases of impeachment," by substituting the judge in place of the jury for the determination of issues of fact in cases in which the Constitution declares "*shall be by jury.*"

It is confidently submitted that no discretion is left to Congress in this matter. The language used is imperative. Contrasted with the language of the Seventh Amendment this is apparent. The Seventh Amendment declares that "In suits at common law, where the value in controversy shall exceed twenty dollars, the *right* of trial by jury shall be preserved." The Third Article of the Constitution says nothing of the *right of* a trial by jury, but that the trial *shall be by jury.*

That this very point was in the minds of the framers of the Constitution is evidenced by the language of Alexander Hamilton, reported in the Federalist, p. 381: "Let me ask, if it is consistent with common sense to suppose, that a provision *obliging the legislative power to submit the trial of criminal causes to juries,* is a privation of its right to authorize or permit that mode of trial in other cases? Is it natural to suppose that *the command to do one thing* is a prohibition to the doing of another, which there was a previous power to do, and which is not incompatible

with the thing to be done? If such a supposition would be unnatural and unreasonable, it cannot be rational to maintain, *that an injunction of the trial by jury in certain cases*, is an interdiction of it in others. * * * If nothing was said in the Constitution on the subject of juries, the legislature would be at liberty either to adopt that institution, or to let it alone. *This discretion, in regard to criminal causes, is abridged by a special injunction*; but it is left at large in relation to civil causes, for the very reason that there is a total silence on the subject. The specification of *an obligation to try all criminal causes in a particular mode*, excludes the obligation of employing the same mode in civil causes, but does not abridge the power of the legislature to appoint that mode, if it should be thought proper."

And Edmund Pendleton said in the Virginia Convention, speaking of the trial of criminal cases, "We have this security, * * * that no other trial can be substituted to that by jury." Virginia Debates, p. 370.

The late Mr. Justice Miller, of this court, in his work on the Constitution says: "You will see that the paragraph in Article III, differs in its language from that which we have already considered in regard to trial by jury in civil cases as prescribed by Article VII of the Amendment. In the latter Article it is the mere right to demand the trial by jury which is guaranteed, and the parties may waive that right either by express agreement or by failure to demand a jury, while the language used in Article III is peremptory that 'the trial of all crimes, except in cases of impeachment, shall be by jury.' This language excludes all other modes, whether with or without the consent of the party. A party may, however, confess his guilt by a plea of guilty, and judgment may be passed upon that plea, yet if there is an issue of fact which has to be tried that trial can only be by jury."

Miller on the Constitution, p. 499.

And the views of Mr. Justice Story were to the same effect: "It is observable," he says, "that the trial of all crimes is not only to be by jury, but to be held in the state where they are committed."

Story on the Constitution, v. 2., 5th ed, 1781.

Likewise Mr. Cooley: "In criminal cases the doctrine that a constitutional privilege may be waived must be true to a very limited extent only. A party may consent to waive rights of property, but the trial and punishment for public offences are not within the province of individual consent or agreement."

Cooley Const. Limitations, 5th ed, p. 217 [* 182].

"Those clauses in the Constitution," says Mr. Rawle, "which provide that the trial of all crimes shall be by jury, in the

state and district where the offence has been committed, are ever to be held sacred."

Rawle on the Constitution, 2nd ed, p. 48.

Again: "The form of asking a prisoner how he will be tried is wholly unnecessary. This provision (Art. III.) is imperative upon the courts and prisoners can be lawfully tried in no other manner. As soon, therefore, as it judicially appears of record that the party has pleaded not guilty, there is an issue in a criminal case which the courts are bound to direct to be tried by a jury."

Bump's Notes of Constitutional Decisions, p. 277.

The opinions of these eminent writers are borne out by certain adjudicated cases. In Unitel States v. Taylor, 11 Fed. Rep., 470, it was held that "The right to a speedy and public trial by an impartial jury is guaranteed to every one accused of crime. It is a right which cannot be waived, and a trial by the court without a jury, even with the consent of the accused, is erroneous."

In the case of United States v. Gilbert, 2 Sumner, 69, the court said: "Where the Constitution provides that the trial of all crimes shall be by jury, and the prisoner pleads not guilty, it is a mere mockery to ask him how he will be tried, for the Constitution has already declared how it shall be. But be this as it may under the state governments, I am clearly of the opinion that the form is wholly unnecessary under the Constitution and laws of the United States in the federal courts. The Constitution has expressly declared that 'the trial of all crimes, except in cases of impeachment, shall be by jury.' It is imperative upon the courts and prisoners can be lawfully tried in no other manner."

By the case of Callan v. Wilson, 127 U. S., 540, it is settled that the provisions in the Constitution relating to trial by jury are in force in the District of Columbia.

With reference to this article of the Constitution, the Court, speaking by Mr. Justice Harlan, said: "In our opinion, the provision is to be interpreted in the light of the principles which, at common law, determined whether the accused, in a given class of cases, *was entitled to be tried by a jury.* It is not to be construed as relating only to felonies, or offences punishable by confinement in the penitentiary. It embraces as well some classes of misdemeanors, the punishment of which involves or may involve the deprivation of the liberty of the citizen. It would be a narrow construction of the Constitution to hold that no prosecution for a misdemeanor is a prosecution for a 'crime' within the meaning of the third article, or a 'criminal prosecution' within the meaning of the Sixth Amendment. And we do not think that the amendment was intended to sup-

plant that part of the third article which relates to trial by jury." p. 549.

Petty larceny is a felony at common law—a crime within the meaning of the Constitution, and was always triable by jury. In re Fauldan, 20 D. C., 433.

1 Hawkins, Pleas of the Crown, 8th ed. p. 152, Sec. 4.
2 East's Pleas of the Crown, p. 736, Sec. 134.

In the case of In re Dana, 7 Benedict, 4, the court, speaking by Blatchford, J. (afterward Associat Justice of this Court), said:

"Even if it were to be conceded, that, notwithstanding the provision in the Constitution that 'the trial of all crimes, except in cases of impeachment, shall be by jury,' Congress has the right to provide for the trial in the District of Columbia, by a court without a jury, of such offences as were, by the laws and usages in force at the time of the adoption of the Constitution, triable without a jury, it is a matter of history, that the offence of libel was always triable, and tried, by a jury. It is therefore one of the crimes which must, under the Constitution, be tried by a jury."

See also: U. S. v. Duane, 1 J. B. Wallace, C. C. Rep., 2nd ed., pp. 106; Cancemi v. The People, 18 N. Y., 128; Waiver of Const. Rights in Criminal Cases, 6 Criminal Magazine, p. 182. 1 Wilson's Works, 467

In the light of these authorities it is apparent that a person accused of larceny in the District of Columbia cannot be tried otherwise than by a jury.

If the language of the Constitution is explicit, and we submit that this is beyond question, then Congress is without power to alter or amend the mode of trial it prescribes.

The petitioner, therefore, having never been legally convicted of a first offence of petit larceny, the Supreme Court of the District of Columbia was without jurisdiction to try and convict him under an indictment for a second offence of petit larceny. By Section 1173 of the Revised Statutes of the District of Columbia, it is provided, prescribing the period of imprisonment of a person convicted of a first offence of petit larceny, that he "shall be imprisoned in the jail of the District for any time not exceeding six months." The court had no authority to sentence him for a first offence to imprisonment *at labor*, nor to order his confinement in a *penitentiary*; and he having already served a term longer than that prescribed by law as the maximum imprisonmnt for a first offence of petit larceny, it is sub-

mitted that the writ of habeas corpus should be granted in his behalf.

In re Mills, 135 U. S., 263; In re Bonner, 151 U. S., 546; United States v. Pridgeon, 153 U. S., 48.

The opinion of the Court of Appeals of the District of Columbia affirming the judgment of the Supreme Court of said District is appended hereto.

GEO. KEARNEY,
PERRY ALLEN,
Attorneys for Petitioner.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

WILLIAM BELT, alias WILLIAM JONES, Appellant,

vs

THE UNITED STATES OF AMERICA.

(The Washington Law Reporter, July 12, 1894,

1. CONSTITUTIONAL LAW.—Trial by Jury—Validity of Act of July 23, 1892, Allowing Accused Party to Waive Trial by Jury affirmed. The act of Congress of July 23, 1892 (27 Stat., 261), providing that in prosecutions in the Police Court of the District of Columbia, in which, according to the Constitution of the United States, the accused would be entitled to a jury trial, the accused may in open court waive trial by jury and elect to be tried by the judge, in which case the trial shall be by the judge, the judgment and sentence to have the same force and effect as if entered and pronounced upon the verdict of a jury, is constitutional and valid.
2. Where a party charged in the Police Court of the District with the offence of larceny expressly waives a trial by jury and elects to be tried by the judge, and is convicted and sentenced, the record of such conviction and sentence is competent evidence, on the trial of the same party in the Supreme Court of the District, holding a criminal term, on an indictment for a similar offense, to prove that it was the defendant's second offense of the same kind.

No. 327. Filed June 15, 1894.

Appeal from judgment of special term of Supreme Court of District of Columbia, Criminal Court, No. 19,681, Cole, J., rendered upon conviction of a second offense of larceny.

Affirmed.

Mr. George Kearney for appellant.

Mr. Chas. H. Armes, Asst., U. S. Attorney, for appellee.

Mr. Justice Morris delivered the opinion of the Court:

The appellant, William Belt, alias William Jones, was indicted in the Supreme Court of the District of Columbia, holding a criminal court, and convicted on the 20th day of February, A. D. 1894, of a second offense of larceny, and sentenced to three years' imprisonment in the penitentiary. The conviction was under Section 1158 of the Revised Statutes of the United States for the District of Columbia, which provides that "every person convicted of feloniously stealing, taking and carrying away any goods or chattels, or other personal property, of the value of thirty-five dollars or upward, or any bank note, promissory note, or any other instrument of writing for the pay-

Note: This is manifest error. Both the information for the

ment or delivery of money or other valuable thing, to the amount of thirty-five dollars or upward, shall be sentenced to suffer imprisonment and labor for the first offense for a period not less than one nor more than three years, and for the second offense for a period not less than three nor more than ten years."

At the trial of the case, after proof of the special offense charged against the defendant, the prosecution proceeded to prove that it was the defendant's second offense of the kind by offering in evidence the record of his previous conviction of the crime of larceny in the Police Court of the District of Columbia on April 8, 1893. To the admission of this record in evidence objection was made on the ground that it showed on its face a waiver of the right of trial by jury on the part of the prisoner and a trial and conviction by the court alone without a jury, a method of procedure claimed to be in violation of the Constitution of the United States and therefore null and void. The objection was overruled, and exception taken; and upon that exception the case has been brought by appeal to this court.

The main question in the case, and that which has been ably and earnestly pressed upon our attention, is whether the constitutional requirement of trial by jury in criminal cases can be validly waived by an accused person, in pursuance of a statute that authorizes such waiver; and a more important question in the present administration of our criminal jurisprudence there could scarcely be presented.

There is also another question involved that seems not to have been considered by counsel on either side, but which we should not for that reason ignore; and that is, whether the validity of a record of this character can be collaterally questioned as is sought to be done here. We regard it as settled by the Supreme Court of the United States that in civil causes no such collateral attack could be sustained. In the case of Maxwell v. Stewart, 21 Wall., 71, Mr. Chief Justice Waite, speaking for that court, says: "The fourth objection is to the effect that the judgment in the Kansas court was void because the cause was tried by the court without the waiver of a trial by jury entered upon the journal. Whatever might be the effect of this omission in a proceeding to obtain a reversal or vacation of the judgment, it is very certain that it does not render the judgment void. At most, it is only error and cannot be taken advantage of collaterally." And this rule has been uniformly maintained by that high tribunal. No error, however serious and however apparent it may be, can be held to render a judgment void in a collateral proceeding. Nothing will be permitted to have that effect but total absence of jurisdiction in the court that rendered it. Williamson v. Berry, 8 How., 495; Thompson v. Whitman, 18 Wall., 457; Thompson

v. Tolmie, 2 Pet., 157; Provident, &c., Society v. Ford, 114 U. S., 635; Union Trust Co. v. Southern, &c., Co., 130 U. S., 565. And the principle would seem to be as applicable to criminal as to civil cases.

But this question in the present instance may be regarded as so bound up with the main question in the case that the consideration of it may well be subordinated to the latter. What may be merely an error or irregularity in a civil cause might be regarded as a jurisdictional matter in criminal causes, in view of the different nature and character of the proceedings.

The question of the waiver of constitutional rights by an accused person is an exceedingly vexed question and has given rise to a great contrariety of decision. It is one on which, in the present instance at least, we can derive no great light from the jurisprudence of England. For notwithstanding that the right of trial by jury is supposed to have been consecrated for all time by Magna Charta, neither Magna Charta nor any other charter of English civil rights is beyond regulation, or even total abrogation, by a simple act of Parliament. The measurement of the validity of ordinary statutory enactment by comparison with the standard of fundamental and practically unchangeable organic law is something unknown to the courts of the country from which we have derived the great body of our common law. And in our own Federal Union of States, while there is a kindred resemblance in the guarantees of personal rights that permeate all our constitutions, both State and Federal; yet there is also sufficient verbal distinctiveness and differentiation of terms as to give occasion for great difference of judicial decision.

That there are rights and immunities secured by our Federal Constitution which may be waived in the courts has been repeatedly decided by the Supreme Court of the United States, and may be regarded as well settled law. Shutte v. Thompson, 18 Wall., 151; Beers v. Arkansas, 20 How., 527; Clark v. Barnard, 108 U. S., 436. The rights and immunities that may be so waived are those that are personal in their nature, and are intended merely for the benefit of the individual, as distinguished from the general interests of society. Cooley's Constitutional Limitations, Chap. 7, 181; Cancemi v. People, 18 N. Y., 128. Thus it has been held that in civil cases a jury may be waived and a trial had before the court, without any statute whatever to authorize such proceedings. Kearney v. Case, 12 Wall., 275; Flanders v. Tweed, 9 Wall., 425; Kelsey v. Forsyth, 21 How., 85; Suydam v. Williamson, 20 How., 427; Guild v. Fronten, 18 How., 135; Bank of Columbia v. Okely, 4 Wheat., 235. So, in criminal cases, while the Constitution guarantees to an accused person the right to be confronted by the witnesses against him, it has been held that he may waive

this right and consent to the reading of a deposition in evidence. State v. O'Connor, 65 Mo., 374; State v. Polson, 29 Iowa, 133; United States v. Sacramento, 2 Mon., 239; People v. Murray, 52 Mich. Similarly, the Constitution guarantees to every person accused of crime a speedy and impartial trial; and yet no one will question the validity of a postponement of trial at the request of the accused person himself. Nor can it be now questioned that a motion by him for a new trial, if granted, will operate as a waiver of the constitutional prohibition that "no person shall be twice put in jeopardy for the same offence."

In all the cases, however, in which a waiver of constitutional right by an accused person has been sustained, the waiver has been merely of a formal matter, or else has been in the interest of the accused. And the rule is inflexibly maintained that nothing can be waived which is jurisdictional or fundamental, or the observance of which is required by public policy. Consequently, the overwhelming weight of authority seems to be that, in the absence of express statutory authority, no accused person can waive the right of trial by jury, in a criminal case, and elect to be tried by the court. Cancemi v. The People, 18 N. Y., 128; Hill v. The People, 16 Mich., 351; Work v. State, 2 Ohio St., 296; Cooley's Const. Limitations, Chap. X, page 319.

As Mr. Justice Cooley says, in his excellent work on Constitutional Limitations, the infirmity of this proceeding would consist in the fact that the tribunal so created "would be one unknown to the law, created by mere voluntary act of the parties, and would be in effect an attempt to submit to a species of arbitration the question whether the accused has been guilty of an offence against the State." Cooley's Constitutional Limitations, Chap. X, page 319. Indeed, the effect of waiver in all cases would seem to be based upon consent. In civil cases it is plainly so; and inasmuch as, in general, parties may make what agreements they please about their private rights, there is no reason why they may not enter into an agreement wherein one waives some privilege or immunity. But it is equally plain that in criminal cases this consent is wanting. The State has, by its organic law or otherwise, determined the tribunal by which criminal cases against those subject to its jurisdiction shall be tried; and it is not competent for its prosecuting officers to ignore that determination and to enter into unauthorized arrangements with an accused party to substitute a referee in the place of the constitutional or statutory tribunal. Not only public policy, but the letter and the spirit of the law forbid such arrangements.

We are here, however, confronted with a different problem. The legislature has given the consent which before was withheld. The public policy which hitherto precluded the waiver of the constitutional right of trial by jury has now found rad-

ically different expression in specific legislative enactment. By an act passed July 23, 1892, Congress provided:

"That prosecutions in the Police Court (of the District of Columbia) shall be on information by the proper prosecuting officer. In all prosecutions within the jurisdiction of said court, in which, according to the Constitution of the United States, the accused would be entitled to a jury trial, the trial shall be by jury, unless the accused shall in open court expressly waive such trial by jury and request to be tried by the judge, in which case the trial shall be by such judge, and the judgment and sentence shall have the same force and effect in all respects as if the same had been entered and pronounced upon the verdict of a jury." 27 Stat., 261.

This provision of law was made in consequence of the decision of the Supreme Court of the United States in the case of Callan v. Wilson, 127 U. S., 540, in which it was held that a previous statute, Rev. Stat. for Dist. of Columbia, Sec. 1064, which dispensed with trial by jury in the Police Court and compelled accused persons to submit to trial by that court without a jury, was invalid and unconstitutional so far as it was sought to be applied to the trial of offenses which at common law were triable by a jury.

While the predilection of the founders of our governmental system fixed the theory of trial by jury firmly in the Federal organic law, as well as in the Constitutions of all the States, it is a well known fact that in later years, the efficacy of the system of trial by jury, in criminal as well as in civil cases, has been very seriously questioned; and there is undoubtedly a growing sentiment that it should in some way be reformed, if it is to be perpetuated. Dissatisfaction with the system as it exists has thus far found legislative expression mainly in statutory enactments giving suitors in civil cases the right by consent to dispense with trial by jury, and to submit their controversies to the courts without a jury. And such enactments are believed to be now very general throughout the States of the Union, and have been universally accepted as a great relief from the old common law methods. More sparingly, however, and for obvious reasons, has it been sought to import these enactments into the criminal jurisprudence of the country. But they have been adopted by many of the States to a greater or less extent, and it has been found by the general experience that their result has been uniformly beneficial. And now the Congress of the United States, by the statute which has been cited, has inaugurated the same policy for the District of Columbia, as nearly thirty years ago it established the same system in civil cases. It is the constitutionality of this statute which is now called in question.

It is supposed to antagonize the second Section of the Third Article of the Constitution, which provides in peremptory terms that "the trial of all crimes shall be by jury." And it is argued that there is a distinction between this peremptory language and the language, more or less permissive, of the Sixth and Seventh Amendments to the Constitution, the former of which provides that "in all criminal cases the accused shall enjoy the right to a speedy and public trial, etc.," and the latter of which specifies that "in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved." It is claimed that while there may be a waiver of right under these Amendments, there can be no waiver of the right secured by the Third Article and that Congress may not validly authorize any such waiver.

In view of the beneficial results sought to be subserved and of the change in public sentiment and public policy which we have remarked, we would hesitate under any circumstances to declare unconstitutional an act of Congress which was enacted not hastily and without due consideration, but with special and express reference to constitutional requirement. The statute is not only an expression of the increasing necessity of dealing summarily with the minor crimes that harass our society; it is likewise an expression, fully justified by experience, of the ability of the courts of law to deal justly with the accused, without the intervention of juries. The theory of the English law was and is, that the courts are the courts of the sovereign; and the jury intervened in them for the protection of the people. Judges and jury alike with us emanate from the people; and the latter are no better guardians of our liberty than the former. The maxim cessatute ratione cessat lex is applicable here—not that such a maxim may nullify an express constitutional provision, but that it may determine what is or is not in accordance with public policy.

We cannot regard the verbal differences between the Third Article of the Constitution and the Sixth and Seventh Amendments as being of much significance. Plainly all these constitutional provisions were intended to subserve a great public policy, in the perpetuation of a system of trial which was assumed to have been greatly involved in the development of our civil liberty. They were not intended to force that system upon us on all occasions, whether we willed it or not. Trial by jury, after all, is no more than an incident in our judicial system. It is but one of the modes known to the law for the determination of some of the issues that arise in our judicial controversies. It is only one of the instrumentalities of the courts; and like all other instrumentalities dependent upon its efficacy for its perpetuation. If the litigants before a tribunal

find it to their interest to dispense with it upon any special occasion, and they distinctly agree to dispense with it for that occasion, and determine the fact in controversy in some other manner, as by the court itself which is to pronounce the final judgment, there is no reason why they should not be permitted so to do. When the State and the individual, in their controversy over the question of criminal liability on the part of the latter, agree to refer that issue to the court, instead of the jury, and the agreement is the result of the free will of the accused, and the accused has entered into the agreement because he regards it to his advantage so to do, as we must assume it is, it is difficult in reason to see where there is any violation of constitutional right. Least of all is there such violation where the party has acquiesced in it, and is not seeking for a reversal of action. The appellant in the present instance is not complaining of the action of the Police Court in convicting him of the crime of which he was found guilty in 1892. He is not seeking to withdraw his waiver, or to have on appeal the benefit of such withdrawal; but merely to determine the effect of a conviction against which no protest was lodged at the time, and which is simply introduced here collaterally, and merely in aggravation of another similar though distinct and independent offense.

It seems to us that the question has been substantially disposed of by the Supreme Court of the United States in the case of Hallinger v. Davis, 146 U. S., 314, where that court, in an opinion pronounced for it by Mr. Justice Shiras, says:

"Upon the question of the right of one charged with crime to waive a trial by jury and elect to be tried by the court, when there is a positive legislative enactment giving the right so to do, and conferring power on the court to try the accused in such a case, there are numerous decisions by State courts, upholding the validity of such proceedings. Dailey v. State, 4 Ohio St., 57; Dillingham v. The State, 5 Ohio St., 280; People v. Noll, 20 Cal., 164; State v. Worden, 46 Conn., 349; State v. Albee, 61 N. H., 423, 428."

This case of Hallinger v. Davis arose in New Jersey, where the Constitution of the State provided that "the right to trial by jury shall remain inviolate;" and yet it was held by the State court, and affirmed by the Supreme Court of the United States, that the right might be waived whenever the legislature authorized such waiver, and the accused thought proper to avail himself of the privilege and to make the waiver. To the same effect, in substance, are the cases of Edwards v. The State, 45 N. J. L. R., 423; Ward v. The People, 30 Mich., 116; Connell v. State, 60 Ala., 89; Murphy v. State, 97 Ind., 580; State v. Sackett, 39 Minn., 70; Lavery v. State, 101 Penn., 560; League v. State, 36 Md., 257.

To hold that he statute before us is unconstitutional, would be, in our opinion, to set the hands backward on the dial of time, and needlessly to overthrow an important branch of the administration of the criminal law of this District. We do not think that the letter of the Constitution should be so interpreted, in opposition to what we must regard as its spirit. We do not think that the immunity intended to be guaranteed by the Constitution, the right of trial by jury, should be forced upon a person against his will, when no public purpose is to be subserved by the restraint, and when, on the contrary, there is an avowed and openly expressed public policy to be subserved by the acceptance of the waiver. Cases are not wanting, indeed they are unfortunately too numerous, where innocence accused of crime has stood in serious danger from an embittered and unreflecting local sentiment, and has only been saved from disaster by a trial by the court, upon waiver of a jury. However valuable may be the system of trial by jury, and however essential its preservation may be deemed to the perpetuation of our free institutions, it would be the merest mockery of the freedom which it is sought to perpetuate, if an accused person should be denied the use of that very freedom when he desires to exercise it in his choice of a tribunal, and the State, by its legislature, voicing the sentiment of the people, authorizes the choice. This would be to enforce freedom by the denial of freedom.

We cannot think that this was the intention of the founders of the Constitution; and we must therefore affirm the constitutionality of the statute in question. Being of this opinion, we must hold that the objection made on behalf of the appellant to the record that was introduced in evidence in this case was not well founded; and consequently the judgment must be affirmed; and it is so ordered.

Judgment affirmed.